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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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MAR 19 2009

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IN THE MATTER OF THE FORMAL
COMPLAINT OF QWEST CORPORATION
AGAINST ARIZONA DIALTONE, INC. TO
ENFORCE ITS INTERCONNECTION
AGREEMENT.

DOCKET NO. T-03608A-07-0694

DOCKET NO. T-01051B-07-0694

PROCEDURAL ORDER

BY THE COMMISSION:

On December 17, 2007, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Complaint against Arizona Dialtone, Inc. ("Arizona Dialtone"). The Complaint stems from a dispute between Qwest and Arizona Dialtone over implementation of the Federal Communications Commission's ("FCC's") Triennial Review Remand Order¹ ("TRRO") and amendment of the Interconnection Agreement ("ICA") between Qwest and Arizona Dialtone.

Also on December 17, 2007, Qwest filed with the Commission a Petition for Arbitration under 47 U.S.C. § 252(b) and Arizona Administrative Code ("A.A.C.") R14-2-1505 ("Petition"), arising out of the same dispute.² This matter has not been consolidated with the Arbitration matter.

On August 6, 2008, Decision No. 70460 was issued in the Arbitration matter, ordering Qwest and Arizona Dialtone to enter into an ICA amendment including Qwest's language, as modified in the Decision, for the ICA amendment sections in dispute. The Decision required Qwest and Arizona Dialtone to submit the signed ICA amendment to the Commission for its review by September 5, 2008. The ICA amendment was filed with the Commission on September 5, 2008, and went into effect by operation of law.

On August 29, 2008, a Procedural Order was issued in this matter requiring Qwest, Arizona

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).

² The Arbitration matter has been assigned to Docket No. T-01051B-07-0693 et al.

1 Dialtone, and Utilities Division Staff ("Staff"), jointly or severally, to make filings updating their
2 positions in this matter and indicating how they believe this matter should proceed, in light of the
3 resolution of the Arbitration matter.

4 The parties made their filings on September 12, 2008. Qwest requested that this matter be kept
5 open, with no procedural schedule, because it might be necessary to resolve differences between the
6 parties over back-billing calculations or to enforce the terms of the ICA Amendment. Qwest further
7 stated that this matter might need to proceed in the event Arizona Dialtone appealed Decision No.
8 70460. Arizona Dialtone stated that the back-billing amount must be quantified in this matter, that
9 Qwest should be required to submit a calculation of the dollar amount of back-billings to which it
10 claims entitlement pursuant to Decision No. 70460, that Arizona Dialtone could then file a response
11 indicating its agreement or disagreement, that Staff could then respond, and that the Commission could
12 then enter an order regarding the dollar amount of back-billings in this matter. Staff recommended that
13 a Procedural Order be issued giving Qwest 30 days to either (1) move to dismiss its Complaint because
14 it is now moot, or (2) identify any issues that Qwest believes are unresolved and that still need to be
15 addressed in this matter.

16 Subsequent to the parties' filings, Arizona Dialtone filed a Complaint and Motion for Stay
17 against the Commission and Qwest in U.S. District Court challenging Decision No. 70460's
18 requirement for the ICA amendment to include language allowing Qwest to back bill Arizona Dialtone
19 the difference between the UNE-P rates Arizona Dialtone paid and the corresponding resale rates for
20 the services received during the post-transition period. The federal district court case is still pending.

21 On March 9³ and 12, 2009, Arizona Dialtone filed a Motion for Order Regarding Qwest
22 Corporation's Backbilling Calculations and Threatened Disconnection of Services ("Motion"). In its
23 Motion, Arizona Dialtone asserts that it has been billed by Qwest for the transition period and the
24 first installment of the post-transition period and lacks sufficient information to determine whether
25 the back-billing amounts asserted by Qwest are valid. Arizona Dialtone requests that the
26 Commission (1) order Qwest to provide to Arizona Dialtone Qwest's calculations of the back-

27
28 ³ The initial filing was made in the Arbitration docket.

1 billings, including a statement of charges by line number and by month for all lines provisioned by
2 Qwest to Arizona Dialtone in Arizona, and (2) issue an interim order prohibiting Qwest from
3 disconnecting Arizona Dialtone's services except upon further Commission order after the back-
4 billing issues have been resolved. Arizona Dialtone stated that it would then, within 30 days after
5 receiving the information the Commission orders Qwest to produce, make a filing with the
6 Commission indicating whether it contests any portion of Qwest's calculations and, if it does,
7 requesting an evidentiary hearing to resolve any disputed issues.

8 On March 13, 2009, Qwest filed a response to the Motion, stating that the Commission should
9 deny the Motion as to the transition period, because Arizona Dialtone has not appealed the transition
10 period back-billing language in federal district court, and should hold the Motion in abeyance as to
11 the post-transition period back-billing. Qwest stated that Arizona Dialtone should be ordered to file,
12 within 10 days, a detailed explanation of its dispute and to pay the portion that is not in dispute and
13 that the parties should meet and confer telephonically regarding how each believes the post-transition
14 period calculation should be made. Qwest further stated that it will not terminate services for
15 nonpayment of the post-transition period back-billing before the Commission establishes a
16 Procedural Order addressing the revised statement of dispute and addressing whether Qwest may
17 terminate service for such nonpayment.

18 Staff has indicated that it does not intend to file a response to the Motion.

19 Because Qwest and Arizona Dialtone appear to be having difficulty implementing the terms
20 of their ICA amendment as related to back-billing and sharing information with each other, it is
21 appropriate to schedule a procedural conference to discuss the back-billing dispute, how the back-
22 billing dispute should be resolved, and how this matter should proceed. Further, it is appropriate to
23 require Qwest and Arizona Dialtone to provide to each other and the Hearing Division, before the
24 procedural conference, their own calculations of the transition period and post-transition period back-
25 billing amounts. In addition, because both Qwest and Arizona Dialtone have revealed in their recent
26 filings dollar amounts that previously were asserted to be confidential, both parties shall also be
27 required to state their positions regarding the extent to which the back-billing information provided as
28 required herein is asserted to be confidential.

1 Finally, it is appropriate to require Staff to indicate whether it desires to participate further in
2 this matter.

3 IT IS THEREFORE ORDERED that a **procedural conference** in this matter shall be held on
4 **April 22, 2009, at 2:00 p.m.**, or as soon thereafter as is practicable, in the 2nd Floor Conference
5 Room at the Commission's Offices at 1200 West Washington Street, Phoenix, Arizona 85007.

6 IT IS FURTHER ORDERED that **Qwest shall provide to Arizona Dialtone and file, by**
7 **April 9, 2009**, (1) a complete accounting⁴ of how the transition period back-billing amounts were
8 calculated, by line number and month; (2) a complete accounting of how the post-transition period
9 back-billing amounts were calculated, by line number and month; and (3) Qwest's position as to the
10 confidentiality of the back-billing information provided by it as ordered herein. If Qwest believes
11 that any of the back-billing information to be provided by it is confidential, Qwest shall file a
12 redacted copy of the information and shall provide an unredacted copy of the information to the
13 undersigned.

14 IT IS FURTHER ORDERED that **Arizona Dialtone shall provide to Qwest and file, by**
15 **April 9, 2009**, (1) a complete accounting⁵ of how it has calculated, by line number and month, the
16 transition period back-billing amount that is owed to Qwest; (2) a complete accounting of how it has
17 calculated, by line number and month, the post-transition period back-billing amount that is owed to
18 Qwest;⁶ and (3) Arizona Dialtone's position as to the confidentiality of the back-billing information
19 provided by it as ordered herein. If Arizona Dialtone believes that any of the back-billing
20 information to be provided by it is confidential, Arizona Dialtone shall file a redacted copy of the
21 information and shall provide an unredacted copy of the information to the undersigned.

22 IT IS FURTHER ORDERED that **Staff shall file, by April 9, 2009**, a statement regarding
23 whether it desires to participate further in this matter.

24 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
25

26 ⁴ As used in this Procedural Order, "complete accounting" means that all information necessary to calculate the amount
shall be provided, whether a specific type of information is specifically listed in this Procedural Order or not.

27 ⁵ See note 4.

28 ⁶ For purposes of determining the back-billing amount owed for the post-transition period, Arizona Dialtone shall
operate under the assumption that Commission Decision No. 70460 is valid and will be upheld by the federal district
court.

1 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
2 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
3 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
4 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
5 Administrative Law Judge or the Commission.

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

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

12 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
13 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

14 DATED this 1st day of March, 2009.


SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

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18 Copies of the foregoing mailed/delivered
19 this 1st day of March, 2009, to:

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By: 
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