

ORIGINAL



0000096754

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

MAY - 7 2009

ARIZONA CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

COMMISSIONERS

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

2009 MAY -7 A 9:33

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. At the same time, 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 Decision No. 70460 was issued in the Arbitration matter on August 6, 2008, 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.

Both Qwest and Arizona Dialtone have stated that they desire for this case to remain open so that it can be used to resolve back-billing issues. A regular procedural schedule has not been

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 established in this case, however, largely because Arizona Dialtone has filed a Complaint and Motion
2 for Stay against the Commission and Qwest in U.S. District Court challenging Decision No. 70460's
3 requirement for the ICA amendment to include language allowing Qwest to back bill Arizona Dialtone
4 the difference between the UNE-P rates Arizona Dialtone paid and the corresponding resale rates for
5 the services received during the post-transition period. The district court case is still pending.

6 On April 22, 2009, a procedural conference was held at the Commission's offices in Phoenix,
7 Arizona, to discuss the back-billing dispute, how the back-billing dispute should be resolved, and how
8 this matter should proceed. During the procedural conference, Arizona Dialtone and Qwest agreed that
9 there is no dispute as to the transition period back-billing amount, only as to the post-transition period
10 back-billing amount. Qwest and Arizona Dialtone were provided the opportunity to engage in
11 settlement discussions during a recess and jointly suggested afterward that they would like additional
12 time to continue their discussions, at least for the purpose of narrowing the issues that they would like
13 the Commission to resolve in this matter. It was agreed that another procedural conference would be
14 held in approximately one month.

15 On April 23, 2009, a Procedural Order was issued scheduling a procedural conference in this
16 matter for May 20, 2009, at 1:00 p.m.

17 On April 28, 2009, Arizona Dialtone filed a Request for Postponement of Procedural
18 Conference because Arizona Dialtone's President, Thomas Bade, will be out of the country from May
19 13 through May 24, 2009. Qwest has not yet filed a response to Arizona Dialtone's Request for
20 Postponement.

21 On May 6, 2009, the Commission scheduled an open meeting to be held on May 20, 2009.
22 Thus, it is now appropriate to vacate the procedural conference scheduled for May 20, 2009, and
23 schedule a procedural conference for another date.

24 IT IS THEREFORE ORDERED that the **procedural conference scheduled for May 20,**
25 **2009, at 1:00 p.m. is hereby vacated.**

26 IT IS FURTHER ORDERED that a **procedural conference** in this matter shall be held on
27 **June 3, 2009, at 10:00 a.m.,** or as soon thereafter as is practicable, in Room 100 at the Commission's
28 Offices at 1200 West Washington Street, Phoenix, Arizona 85007. At the procedural conference, the

1 parties shall provide updates regarding the status of the dispute as to the post-transition period back-
2 billing and Arizona Dialtone's payment of the undisputed back-billing amount for the transition period.

3 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
4 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
5 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
6 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
7 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
8 Administrative Law Judge or the Commission.

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

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

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

17 DATED this 7th day of May, 2009.

18
19 

20 SARAH N. HARPRING
21 ADMINISTRATIVE LAW JUDGE
22
23
24
25
26
27
28

1 Copies of the foregoing mailed/delivered
this 7th day of May, 2009, to:

2 Norman G. Curtright, Corporate Counsel
3 QWEST CORPORATION
4 20 East Thomas Road, 16th Floor
5 Phoenix, AZ 85012
6 Attorney for Qwest Corporation

7 Glenn B. Hotchkiss
8 CHIEFETZ, IANNITELLI & MARCOLINI, P.C.
9 Viad Tower, 19th Floor
10 1850 North Central Avenue
11 Phoenix, AZ 85004
12 Attorney for Arizona Dialtone, Inc.

13 Tom Bade, President
14 ARIZONA DIALTONE, INC.
15 6115 South Kyrene Road, No.103
16 Tempe, AZ 85283

17 Janice Alward, Chief Counsel
18 Legal Division
19 ARIZONA CORPORATION COMMISSION
20 1200 West Washington Street
21 Phoenix, AZ 85007

22 Ernest G. Johnson, Director
23 Utilities Division
24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington Street
26 Phoenix, AZ 85007

27 ARIZONA REPORTING SERVICE, INC.
28 2200 North Central Avenue, Suite 502
Phoenix, AZ 85004

By: 
Debra Broyles
Secretary to Sarah N. Harpring