

ORIGINAL



0000098168

BEFORE THE ARIZONA CORPORATION COMMISSION
RECEIVED

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

2009 OCT -1 A 10: 01
AZ CORP COMMISSION
DOCKET CONTROL

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

DOCKET NO. RT-00000H-97-0137

10 IN THE MATTER OF THE INVESTIGATION OF
11 THE COST OF TELECOMMUNICATIONS
12 ACCESS.

DOCKET NO. T-00000D-00-0672

PROCEDURAL ORDER

BY THE COMMISSION:

13 Docket No. T-00000D-00-0672, the "Access Charge Docket," was opened to examine the
14 cost of access for various companies operating in Arizona. Phase I of the Access Charge Docket,
15 addressed Qwest Corporation's ("Qwest") access charges, and was consolidated with, and resolved,
16 in conjunction with Qwest's rate cap review. Phase II of the Access Charge Docket was intended to
17 address access charges for all other Arizona telephone companies that provide access services.

18 Docket No. RT-00000H-97-0137, the "Arizona Universal Service Fund Docket" was set up to
19 review and revise the Arizona Universal Service Fund ("AUSF") rules in Article 12 of the Arizona
20 Corporation Commission ("Commission") Rules.

21 Changes being discussed at the Federal Communications Commission ("FCC") indicate that
22 at the federal level access charges and universal service are being linked to some degree, at least for
23 high-cost rural areas. Thus, upon the Motion of the Commission's Utilities Division ("Staff"), the
24 Access Charge and AUSF Dockets were consolidated by Procedural Order dated September 19,
25 2007.

Arizona Corporation Commission
DOCKETED
OCT -1 2009

DOCKETED BY

1 By Procedural Orders dated February 12, 2008, April 23, 2008, and August 20, 2008, the
2 parties were ordered to file a matrix or list of issues and procedural recommendations in order to
3 establish procedures and a schedule.

4 On October 7, 2008, Cox Arizona Telecom, LLC ("Cox"); AT&T Communications of the
5 Mountain States, Inc. and TCG Phoenix (collectively "AT&T"); Integra Telecom, Inc. ("Integra");
6 McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"); the Arizona Local Exchange
7 Carriers Association ("ALECA"); the Residential Utility Consumer Office ("RUCO"); Verizon
8 California, Verizon, Business Services, Verizon Long Distance, and Verizon Wireless (collectively
9 "Verizon"); tw telecom of Arizona LLC ("tw telecom"); XO Communications Services, Inc. ("XO");
10 and Arizona Payphone Associations ("APA") filed issue statements. While there was some overlap
11 in their recommendations, there was no clear consensus on how to proceed.

12 During a Procedural Conference on October 10, 2008, Staff and the interested parties agreed
13 that further action in these dockets could, and should, wait to determine any impact of an expected
14 order addressing intercarrier compensation from the FCC in early November, 2008. Thereafter, by
15 Procedural Order dated December 19, 2008, a Procedural Conference was scheduled for January 28,
16 2009, with the intent to determine the best process to address the issues. The parties were directed to
17 file any comments on Staff's proposed form of Protective Order and any proposed procedural
18 recommendations by January 23, 2009.

19 At the January 29, 2009 Procedural Conference,¹ there was no consensus on how to proceed,
20 with AT&T advocating a schedule for an evidentiary hearing and a process that would include all
21 carriers;² the CLECs recommending a suspension of activities until the FCC issues direction and that
22 CLEC access charges not be examined at this time; and the incumbent carriers (excluding Qwest)
23 advocating workshops. Staff recommended a series of at least two workshops. Staff believed that
24 the Commission should continue with these dockets as it had already waited in vain for years for the
25 FCC to act; however, Staff believed that it was premature to schedule evidentiary hearings, as critical
26 policy matters needed to be determined first.

27 _____
28 ¹ The original date of the proceeding was continued to accommodate a scheduling conflict.

² AT&T also proposed date requests designed to obtain carrier-specific information on access charges.

1 By Procedural Order dated February 3, 2009, a workshop process was adopted, and the parties
2 were directed to file recommendations on whether Qwest's access charges should be made part of the
3 inquiry. Our Procedural Order dated March 17, 2009, determined that Qwest should participate in
4 the process, but requested Staff's recommendation concerning whether changes to Qwest's access
5 charges should be considered as part of these dockets, or part of Qwest's pending renewal of its Price
6 Cap Plan (Docket No. T-01051B-03-0454). On April 8, 2009, Staff filed a Memorandum
7 recommending that Qwest's access charges be addressed in the pending Price Cap Plan docket.

8 During the summer of 2009, the parties participated in two workshops, one focusing on
9 Access Charges and the other on AUSF. At the conclusion of the workshops, Staff requested the
10 parties to submit procedural recommendations by August 10, 2009. On July 27, 2009, Qwest
11 Communications Company, LLC ("QCC") filed a Request that the investigation include contracts
12 that CLECs have entered into with selected IXCs to provide intrastate switched access rates that are
13 below the tariff rates those CLECs have filed with the Commission. On August 5, 2009, AT&T filed
14 a Request for Procedural Conference, which request was joined in by Integra, RUCO and ALECA.
15 On August 7, 2009, Qwest filed a Response to AT&T; and on August 14, 2009, AT&T filed a Reply.

16 On August 10, 2009, AT&T, Cox and Integra filed Procedural Recommendations pursuant to
17 Staff's request.

18 By Procedural Order dated August 13, 2009, a Procedural Conference convened on
19 September 16, 2009, to discuss how to proceed with these dockets, and including QCC's Request.
20 Also on September 16, 2009, RUCO filed Supplemental Comments clarifying its recommendations
21 made earlier during the Procedural Conference.

22 In the two years since the consolidated dockets were re-activated, the Commission has
23 grappled with how best to proceed with its investigation into access charges and AUSF. There does
24 not appear to be a dispute that access charges and AUSF should be reviewed to reflect the current
25 realities in the communications industry, but after years of discussions among the parties, discovery
26 and workshops, no consensus has emerged about how to proceed, much less on the substantive or
27 policy questions. AT&T continues to advocate for evidentiary hearings to resolve the issues, and
28 offered a suggested schedule for filing testimony and a list of issues that parties should, at a

1 minimum, address in pre-filed testimony. The CLECs continue to believe that the Commission
2 should wait for FCC action to avoid potentially unnecessary proceedings and conflicting results.³
3 Some parties commented that holding hearings prior to having draft proposed rule revisions on which
4 to comment, puts the cart before the horse. In addition, Qwest clarified that its request to address
5 CLEC contracts with the IXC's was not intended to examine or seek restitution for past behavior, but
6 to examine whether such contracts should be allowed as a matter of policy in the future. Some
7 parties believed QCC should file a complaint if it believes the alleged contracts are contrary to law,
8 and feared the proceeding would be improperly complicated if QCC or Qwest were allowed to raise
9 the subject. Staff now supports AT&T's recommendation for an evidentiary hearing, with a slight
10 modification to the proposed schedule. As expressed in its Supplemental Comments, RUCO also
11 supports submitting disputes to the Administrative Law Judge for resolution. AT&T, Staff and
12 RUCO believe Qwest should be able to raise the policy question of contractual access rates in the
13 proceeding.

14 The process appears at an impasse with a number of unresolved and important issues. The
15 Commission and parties have attempted to reach consensus through discussion and workshops, but
16 have not been able to find common ground to move forward with specific proposals. The
17 recommendation to conduct an evidentiary hearing appears to be the best means to make progress
18 with the Commission's investigation in these matters. A hearing would allow the Commission to
19 consider and make policy determinations that may give rise to a rulemaking process and/or carrier
20 specific proceedings.

21 The hearing will cover, at a minimum, but not be limited to, the following issues, and parties
22 may address additional matters that they believe are important to the Commission's investigation:

- 23 1. What carriers should be covered by access reform?
- 24 2. To what target level should access rates be reduced?
- 25 3. What procedures should the Commission implement to achieve the desired
26 reduction in access rates?

27 _____
28 ³ However, to the extent the Commission opts to proceed with hearings, Integra recommends keeping to a generic investigation, as it believes that carrier specific proceedings at this point would be unwieldy.

- 1 4. Should carriers be permitted to contract for access rates that differ from their
- 2 tariffed rates?
- 3 5. What revenue sources should be made available to carriers to compensate for
- 4 the loss of access revenues?
- 5 6. How much of access cost recovery, if any, should be shifted to end users?
- 6 What showing should be required for such a shift? What should be the role of
- 7 “benchmark” rates and how should benchmarks be set?
- 8 7. Procedurally what will be required of a carrier if it seeks a “revenue neutral”
- 9 increase in local rates?
- 10 8. Assuming that AUSF funds will also be used as a compensating revenue
- 11 source, what specific revisions (including specific recommended amendment
- 12 language) to the existing rules are needed to allow use of AUSF funds for that
- 13 purpose?
- 14 9. Which carriers should be eligible for AUSF support?
- 15 10. What should be supported by AUSF? Access replacement only? High cost
- 16 loops? Line extensions? Centralized administration and automatic enrollment
- 17 for Lifeline and Link-up?
- 18 11. What should be the basis of AUSF contributions and what should be the
- 19 structure of any AUSF surcharge(s)?
- 20 12. Any other specific revisions to the AUSF rules.⁴
- 21

22 IT IS THEREFORE ORDERED that the **hearing** in this matter shall commence on **March 16,**
23 **2010, at 10:00 am,** or as soon thereafter as is practical, at the Commission’s **Tucson office, Room**
24 **222,** 400 West Congress, Tucson, Arizona.

25 IT IS FURTHER ORDERED that a **telephonic pre-hearing conference** for the purpose of
26 scheduling witnesses and discussing other hearing procedures shall commence on **March 9, 2010, at**
27

28 ⁴ The parties should review Staff’s list of issues filed on October 7, 2008 for a more detailed breakdown of possible issues.

1 **10:00 a.m.**, or as soon thereafter as is practical, at the Commission's Tucson offices, **Room 218**, 400
2 West Congress, Tucson, Arizona. The parties may appear telephonically by contacting the Hearing
3 Division the week prior to the Pre-hearing Conference for instructions.

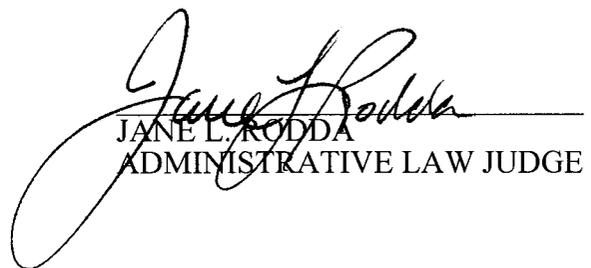
4 IT IS FURTHER ORDERED that **the parties shall file written testimony** and copies of
5 exhibits to be used at the hearing as set forth below:

6	Direct testimony (except Staff and RUCO)	December 1, 2009
7	Staff and RUCO testimony	January 6, 2010
8	Reply testimony – all parties	February 5, 2010
9	Rejoinder Testimony – all parties	March 5, 2010

10 IT IS FURTHER ORDERED that unless and until further order, any adjustment to Qwest's
11 access charges shall be addressed in the pending Price Cap Plan docket.

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 29th day of September, 2009.


 JANE L. RODDA
 ADMINISTRATIVE LAW JUDGE

15
16
17
18
19 Copies of the foregoing mailed
this 29th day of September, 2009 to:

20 Dan Pozefsky
21 Chief Counsel
RESIDENTIAL UTILITY
22 CONSUMER OFFICE
1110 West Washington Street, Suite 220
Phoenix, Arizona 85007
23 dpozefsky@azruco.gov*

24 Norm Curtright
Corporate Counsel
25 QWEST CORPORATION
20 East Thomas Road, 16th Floor
Phoenix, Arizona 85012
26 norm.curtright@qwest.com

Reed Peterson
QWEST CORPORATION
20 East Thomas Road, 16th Floor
Phoenix, Arizona 85012

Michael W. Patten
ROSHKA DEWULF & PATTEN, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
mpatten@rdp-law.com*
Attorneys for Cox Arizona Telecom, LLC
Attorneys for McLeodUSA

1 Craig A. Marks
 2 CRAIG A. MARKS, PLC
 10645 North Tatum Blvd., Suite 200-676
 3 Phoenix, Arizona 85028
Craig.Marks@azbar.org
 Attorney for ALECA

4 Michael M. Grant
 GALLAGHER & KENNEDY, P.A.
 5 2575 East Camelback Road
 Phoenix, Arizona 85016
mmg@gknet.com*
 6 Attorneys for AT&T

7 Isabelle Salgado
 AT&T NEVADA
 8 P.O. Box 11010
 645 East Plumb Lane, B132
 9 Reno, Nevada 89520
dfoley@att.com *
 10 gc1831@att.com*

11 Joan S. Burke
 OSBORN MALEDON, PA
 2929 North Central Avenue, Suite 2100
 12 Phoenix, Arizona 85012
jburke@omlaw.com*
 13 Attorneys for Time Warner Telecom
 Attorneys for XO Communications

14
 15 Lyndall Nipps
 Vice President, Regulatory
 TIME WARNER TELECOM
 16 845 Camino Sur
 Palm Springs, California 92262
 17 Lyndall.Nipps@twtelecom.com*

18 Thomas Campbell
 Michael Hallam
 19 LEWIS AND ROCA LLP
 40 North Central Avenue, Suite 1900
 20 Phoenix, Arizona 85004
tcampbell@lrlaw.com*
mhallam@lrlaw.com*
 21 Attorneys for Verizon

22 Dennis D. Ahers
 Associate General Counsel
 23 INTEGRA TELECOM, INC.
 730 Second Avenue, Suite 900
 24 Minneapolis, Minnesota 55402
ddahlers@eschelon.com

25 Rex Knowles
 Executive Director - Regulatory
 26 XO COMMUNICATIONS
 111 East Broadway, Ste. 1000
 27 Salt Lake City, Utah 84111
rex.knowles@so.com*
 28

Charles H. Carrathers, III
 General Counsel, South Central Region
 VERIZON, INC.
 600 Hidden Ridge
 HQE03H52
 Irving, Texas 75015
chuck.carrathers@verizon.com*

Thomas W. Bade
 President
 ARIZONA DIALTONE, INC.
 6115 South Kyrene Road, #103
 Tempe, Arizona 85283
TomBade@arizonadialtone.com*

Brad VanLeur
 President
 ORBITCOM, INC.
 1701 North Louise Avenue
 Sioux Falls, South Dakota 57107
bvanleur@svtv.com

Gary Joseph
 Arizona Payphone Association
 SHARENET COMMUNICATIONS
 4633 West Polk Street
 Phoenix, Arizona 85043
garyj@nationalbrands.com*

Karen E. Nally
 LAW OFFICE OF KAREN E. NALLY, PLLC
 3420 East Shea Blvd., Suite 200
 Phoenix, Arizona 85028
knallylaw@cox.net
 Attorney for Arizona Payphone Association

Nathan Glazier
 Regional Manager
 ALLTEL COMMUNICATIONS, INC.
 4805 East Thistle Landing Drive
 Phoenix, Arizona 85044
nathan.glazier@alltel.com*

Mark A. DiNumzio
 COX ARIZONA TELCOM, LLC
 1550 West Deer Valley Road
 MS DV3-16, Bldg. C
 Phoenix, Arizona 85027
mark.dinumzio@cox.com*

William A. Haas
 Deputy General Counsel
 MCLEODUSA TELECOMMUNICATIONS
 SERVICES, INC.
 6400 C Street SW
 Cedar Rapids, Iowa 52406
bill.haas@mcleodusa.com*

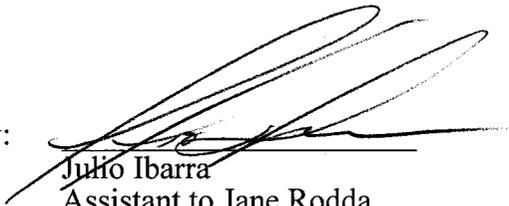
1 Paul Castaneda
2 President, Local 7019
3 COMMUNICATION WORKERS OF AMERICA
4 2501 West Dunlap, Suite 103
5 Phoenix, Arizona 85029

6 Greg L. Rogers
7 LEVEL 3 COMMUNICATIONS, LLC
8 1025 El Dorado Blvd.
9 Broomfield, Colorado 80021

10 Janice Alward, Chief Counsel
11 Legal Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85004

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, Arizona 85004

15
16
17
18
19
20
21
22
23
24
25
26
27
28
By: 
Julio Ibarra
Assistant to Jane Rodda

- Parties marked with an "*" have agreed to accept service electronically.