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2009 AUG -7 P 3:43

AZ CORP COMMISSION  
DOCKET CONTROL

**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 COPORATION'S RESPONSE TO AT&T'S REQUEST FOR  
PROCEDURAL CONFERENCE OR PROCEDURAL ORDER IN AUSF AND ACCESS  
CHARGES DOCKETS  
AND MOTION TO STRIKE INSOFAR AS THE REQUEST IS IMPROPERLY  
CAPTIONED AND DOCKETED IN  
DOCKET NO. T-01051B-03-0454**

Qwest Corporation hereby (1) responds to AT&T's Request for Procedural Conference in RT-00000H-97-0137 ("AUSF Docket") and Docket No. T-00000D-00-0672 ("Access Charges Docket") and (2) moves to strike AT&T's Request for Procedural Conference or Procedural Order filed on August 5, 2009 ("Request for Procedural Conference"), as improperly captioned and docketed in Docket No. T-01051B-03-0454.

Arizona Corporation Commission

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## INTRODUCTION

AT&T filed its Request for Procedural Conference with Arizona Corporation Commission Docket Control and caused it to be docketed in the consolidated dockets involving the Arizona Universal Service Fund Rules (the "AUSF Docket")<sup>1</sup> and the Investigation of the Cost of Telecommunications Access (the "Access Docket").<sup>2</sup> However, AT&T also captioned its Request for Procedural Conference with another proceeding, *In the Matter of Qwest Corporation's Filing of Renewed Price Regulation Plan*, Docket No. T-01051B-03-0454 (the "Qwest Price Cap Plan Docket") and caused it to be filed in that docket as well. Qwest does not object to AT&T's request for a procedural conference in the consolidated AUSF Docket and the Access Docket, as discussed below. However, AT&T's Request for Procedural Conference in the Price Cap Plan Docket together with the consolidated Access Charges Docket and AUSF Docket is improperly formed, is improperly lodged, and should be stricken. The Commission has not decided that Phase II of the Access Charges Docket is consolidated with the Price Cap Plan Docket. In fact, as discussed below, the record to date reflects the understanding of the Commission and the Staff that Qwest's Price Cap Plan is not part of this proceeding. AT&T's Motion, captioned and filed as a consolidated proceeding, is therefore unauthorized and out of order.

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## DISCUSSION

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**A. Response to Request For Procedural Conference in the AUSF and Access Charges Dockets**

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<sup>1</sup> *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 ("AUSF Docket").

<sup>2</sup> *In the Matter of the Investigation of the Cost of Telecommunications Access*, Docket No. T-00000D-00-0672 ("Access Charges Docket").

1 Qwest does not object to the Request for Procedural Conference, for the AUSF Docket  
2 and the Access Charges Docket. The closure of the Staff's workshops, and Qwest's request that  
3 the Commission investigate switched access contracts in the context of the analysis of issues  
4 relating to access charges, is a natural point at which the Commission should pause to determine  
5 the next procedural steps. In fact, at the close of the last workshop on July 27, 2009, the Staff  
6 asked each party to submit its proposals for the process that should follow. Oversight of that  
7 process by the Hearing Division is quite appropriate. In light of AT&T's Request, which has  
8 been seconded by Integra, Qwest will respectfully await the direction of the Commission's  
9 disposition of the Request for Procedural Conference before submitting its process suggestions.

10 Currently, the procedural schedule requires that the Staff shall file a request for  
11 Procedural Conference to determine the next steps, within 30 days after the conclusion of the  
12 Staff workshop. *See* Procedural Order, February 5, 2009, at 4:25-27. Qwest respectfully  
13 suggests that before the next steps for the consolidated docket may be determined, decisions  
14 must be made about whether, and how, Staff and the parties examine the CLECs' private access  
15 charges agreements and the issues that are raised by such agreements. Qwest asks that the  
16 existing procedural schedule be modified to accommodate such investigation, and that the  
17 obligation of Staff to file for a procedural conference 30 days after the conclusion of its  
18 workshop (which occurred July 27, 2009), should be stayed temporarily.

19  
20 **B. Motion to Strike the Request For Procedural Conference in the Price Cap**  
21 **Plan Docket**

22 At the urging of AT&T, the Access Charges Docket was split into two phases in 2003.  
23 Phase I considered access charges in combination with Qwest's Price Cap Plan. The  
24 Commission consolidated the Qwest Price Cap Plan Docket with Phase I of the Access charges  
25 Docket. Qwest's access charges were the only carrier's access charges addressed in Phase I.  
26 That consolidated docket was completed and resolved. *See* Procedural Order, December 19,

1 2008. (“Phase I of the Access Charge Docket, addressed Qwest Corporation’s access charges,  
2 and was consolidated with, and resolved, in conjunction with Qwest’s rate cap review. Phase II  
3 of the Access charge Docket is intended to address access charges for all other telephone  
4 companies that provide access services”).

5 More recently, AT&T asked that Phase II of the Access Charges Docket, which had not  
6 progressed in over five years and had not resulted in the reduction of any carriers rates, be  
7 expanded to include an analysis of Qwest’s access rates again.<sup>3</sup> By Procedural Order issued  
8 March 17, 2009, it was determined that Qwest’s participation in Phase II was necessary in order  
9 for the Commission to develop a full understanding of the access issues. *See* Procedural Order,  
10 Mar. 17, 2009, 4:5-17 (“It is difficult to see how the Commission can get a clear picture of the  
11 issues and fairly assess the impact for access charges in the state without the participation of  
12 Qwest, the largest carrier in the state, as well as the Arizona CLECs”). However, the extent of  
13 the order to re-involve Qwest, is, at this time, quite narrow—it only subjects Qwest to data  
14 requests. *See*, Procedural Order, March 17, 2009, at 4:17-18. (“Consequently, Staff should be  
15 able to include Qwest and the Arizona CLECs in the data request to be sent prior to workshops”).

16 The March 17, 2009 Procedural Order, did not consolidate the current phase of the  
17 Access Charges Docket with the Price Cap Docket. Rather, the Procedural Order asked the  
18 Commission Staff for its views. *See* Procedural Order, at 4:24-26—5:1-3. (“Consequently,  
19 Staff is directed to file Comments and Recommendations in *these dockets*<sup>4</sup> regarding whether,  
20 and in what context, Qwest’s switched access charges should be reviewed, including Staff’s  
21 position on the relationship, if any, between Qwest’s request to renew the Price Cap Plan and  
22 Phase II of the Access Charge Docket”). (Emphasis added).

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24 <sup>3</sup> *See* Procedural Comments filed by AT&T, January 23, 2009; *see also* Comments of AT&T in  
Response to February 3, 2009 Procedural Order, February 18, 2009.

25 <sup>4</sup> The dockets the Commission refers to are the AUSF Docket and the Access Charges Docket,  
26 not the Price Cap Plan. The Commission has never lodged any of its orders in the consolidated  
Phase 2 Price Cap Plan Docket and AUSF Docket in the Price Cap Plan Docket.

1           Subsequently, the Staff filed its Comments and Recommendations on April 8, 2009,  
2 concluding that the current Access Charges Docket is a *generic docket designed to address*  
3 *policy issues* concerning access charges, and not to set any individual carrier's level of access  
4 charges. See Staff Response, Access Charges Docket and AUSF Docket, April 8, 2009, p. 2.  
5 ("Staff believes that the ALJ's inclusion of Qwest in this *generic docket designed to address*  
6 *policy issues* concerning access charges is appropriate)." (Emphasis added).

7           AT&T's attempt to conflate the generic docket designed to address policy issues  
8 regarding access charges with an adjudication of the rates of a particular carrier, is fraught with  
9 serious risk to the constitutional guarantee of due process for that carrier. Indeed, as the  
10 Commission has already stated, it likely will have to establish separate proceedings to determine  
11 the access rates of individual carriers. See Procedural Order, September 19, 2007, at 2:13-16.  
12 ("At some point, portions of the Access Charge Docket may become contested in nature as the  
13 Commission determines appropriate intrastate access charges for individual carriers. At that  
14 time, the Commission will establish separate procedures for adjudicating any potentially  
15 contested cases").

16           However, a constitutional law analysis is not necessary, because as a practical matter it  
17 makes no sense whatsoever to set access charge rates for any carrier at the same time, or even  
18 before, the Commission has determined the policy that should apply to access charge issues.

19           AT&T's Request for Procedural Conference should be stricken from the record in so far  
20 as it is improperly captioned and docketed.

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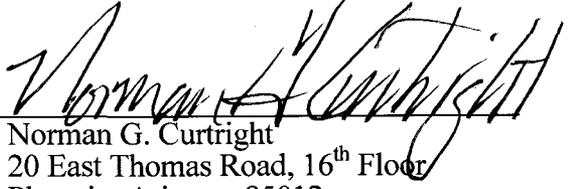
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RESPECTFULLY SUBMITTED this 7th day of August, 2009.

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