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BEFORE THE ARIZONA CORPORATION C



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Arizona Corporation Commission

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COMMISSIONERS

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

DOCKET NO. T-01051B-07-0694
T-03608A-07-0694

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

COMMISSION STAFF'S RESPONSE
TO QWEST CORPORATION'S
REQUEST FOR A PROCEDURAL
CONFERENCE

On October 15, 2009, Qwest Corporation ("Qwest") filed a Request for Procedural Conference for the purpose of discussing recommencing proceedings in this Docket. By Procedural Order dated October 27, 2009, the Hearing Division ordered Qwest to file a pleading explaining why the automatic stay provision of 11 U.S.C. § 362 would not prevent the Commission from holding a procedural conference in this matter or any other proceeding in this matter and setting forth what Qwest desires to accomplish through the procedural conference.¹ Staff was ordered to respond to Qwest's filing by November 24, 2009.

On November 9, 2009, Qwest filed a Status Report and Brief in Support of its Request for a Procedural Conference. Qwest stated in its filing that the United States Bankruptcy Court for the District of Arizona (the "Bankruptcy Court") abstained from hearing the back billing dispute between the parties so that it could be resolved by the Commission.² Qwest further explained that Arizona Dialtone had filed an Adversary Proceeding (No. 2:09-ap-00716) against Qwest in the Bankruptcy Court to have the Bankruptcy Court decide the dispute. Qwest filed a Motion to Dismiss the Adversary Proceeding and the Bankruptcy Court heard oral argument on Qwest's Motion. Qwest attached a copy of the transcript of the oral argument which confirms that the Court did in fact dismiss the Adversary Proceeding filed by Arizona Dialtone without prejudice.

¹ Arizona Dialtone filed a Chapter 11 Petition in Bankruptcy on May 18, 2009.

² Qwest Brief at p. 1.

1 Qwest cites from the transcript of those proceedings wherein the Bankruptcy Court's finds the
2 following:

3 The motion is granted on three independent grounds. It's granted on the
4 ground of primary jurisdiction, it's granted on the ground of mandatory abstention
5 applies. And if some higher authority should determine I'm wrong on mandatory
6 abstention applying, I'm going to exercise discretionary abstention and abstain in the
7 interest of comity with the corporation commission and its superior expertise in
8 matters of – I won't say rates necessarily, but calculation of debts due and owing
9 between – think they're both LECs, but the two different kinds of LECs.

10 * * *

11 And, in that regard, I do find that primary jurisdiction exists before the
12 [Commission], and that it has superior competence and expertise in deciding matters
13 of this kind. That's why I would grant discretionary abstention out of the interest of
14 comity with the [Commission]. And for purposes of mandatory abstention, I finally
15 conclude that an action is pending and can be timely adjudicated in a state forum of
16 proper jurisdiction, namely the [Commission].³

17 While it is clear that the Adversary proceeding has been dismissed, Qwest states in its motion,
18 that it asked Arizona Dialtone to stipulate to stay relief to: (1) remove any doubt as to whether this
19 proceeding is stayed by the automatic stay; and (2) proceed with litigating the back billing dispute
20 promptly consistent with the desire that Arizona Dialtone expressed to the Bankruptcy Court.⁴
21 Arizona Dialtone refused to stipulate.

22 Qwest's argument that the Bankruptcy Court implicitly granted stay relief when it granted
23 Qwest's Motion to Dismiss and abstained from the Adversary, is simply not clear from the transcript.
24 In fact the Court at one point makes reference to entering a formal judgment.⁵ Qwest informed Staff
25 that while a formal judgment had been entered on this matter, no reference was made to the lifting of
26 the automatic stay.

27 ...
28 ...
29 ...
30 ...
31 ...

³ Qwest Brief, Exhibit 1 at 27-28.
⁴ Qwest Brief at p. 5.
⁵ Qwest Brief, Attachment A, Transcript at p. 28.

1 For these reasons, Staff agrees with Qwest that before the Commission proceeds to hold a
2 procedural conference as requested by Qwest, Qwest should file a Motion for Stay Relief in the
3 Bankruptcy Court.⁶ Once that is granted, Qwest should inform the Commission so that a procedural
4 schedule can be established.

5 RESPECTFULLY SUBMITTED this 24th day of November, 2009.

6 

7 Maureen A. Scott, Senior Staff Counsel
8 Legal Division
9 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

10 Original and thirteen (13) copies
11 of the foregoing filed this 24th
day of November, 2009 with:

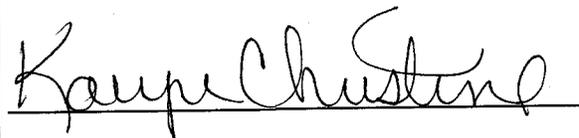
12 Docket Control
13 Arizona Corporation Commission
1200 West Washington Street
14 Phoenix, Arizona 85007

15 Copies of the foregoing mailed this
24th day of November, 2009 to:

16 Norman G. Curtright, Corporate Counsel
17 Qwest Corporation
20 East Thomas Road, 16th Floor
18 Phoenix, Arizona 85012
Attorney for Qwest Corporation

19 Claudio E. Iannitelli, Esq.
20 Glenn B. Hotchkiss, Esq.
21 Matthew A. Klopp, Esq.
Chiefetz, Iannitelli & Marcolini, PC
22 Viad Tower, 19th Floor
1850 North Central Avenue
Phoenix, Arizona 85004
23 Attorneys for Arizona Dialtone, Inc.

24 Tom Bade, President
Arizona Dialtone, Inc.
25 7170 West Oakland
Chandler, Arizona 85226

26 

28 ⁶ Qwest informed Staff that it has already filed a Motion for Stay Relief.