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INTERVENTION



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IN THE MATTER OF THE APPLICATION
OF COX ARIZONA TELCOM, L.L.C. TARIFF
FILING TO ADD SWITCHED ACCESS
SERVICES CONTRACT

DOCKET NO. T-03471A-10-0132

QWEST COMMUNICATIONS
COMPANY, LLC PROTEST AND
APPLICATION FOR LEAVE TO
INTERVENE

MOTION TO SUSPEND COX
ARIZONA TELCOM, L.L.C. TARIFF
REVISIONS AND TO HOLD
HEARINGS

Expedited Consideration Requested

PROTEST AND APPLICATION FOR LEAVE TO INTERVENE

Qwest Communications Company, LLC ("QCC") protests the Cox Arizona Telecom, L.L.C. Tariff Filing to Add Switched Access Services Contract, and seeks leave to intervene in the docket. In support of its protest and application, QCC states:

QCC is organized under the laws of the State of Delaware with its principal place of business at 1801 California Street, Denver, Colorado. QCC is qualified to do business in Arizona, and is a telecommunications carrier certified to provide telecommunications services in Arizona, pursuant to orders of the Arizona Corporation Commission (the "Commission").¹ Specifically relevant to this proceeding, QCC is an interexchange carrier ("IXC"), providing long

¹ Arizona Corporation Commission Decision Nos. 66612 and 68447.

1 distance telecommunications services throughout the State of Arizona.

2 In order to provide long distance services to their customers, IXCs typically must
3 purchase switched access service from the carrier that provides local exchange service. A
4 residential customer, for example, will subscribe to local telephone service from a local
5 exchange carrier (a "LEC"), which may be an incumbent local exchange carrier ("ILEC") or a
6 competitive local exchange carrier ("CLEC"). Under long-standing laws that established
7 competition in the long distance telephone market, the LEC must provide access to the
8 customer's selected IXC, so that long distance calls that are made by the customer originate on
9 the local telephone network and are routed to the IXC's network. In reverse, calls that are sent
10 from long distance carriers to the customer must be terminated on the local network. It would be
11 prohibitively expensive for every IXC to have its own wire to each customer. Local access, both
12 originating and terminating, is most commonly accomplished by switching connections made by
13 the LEC. The service is called switched access.

14 Intrastate switched access services are subject to the jurisdiction of the Commission, and
15 the rates are embodied in tariffs filed by ILECs and CLECs. The switched access charges
16 represent a significant expense to IXCs. The Commission is actively involved in a generic
17 investigation into the cost of switched access services provided by CLECs and other types of
18 LECs (the "Access Charge Investigation").² Although the telecommunications services CLECs
19 provide to end users are competitive, IXCs must access their customers by going through the
20 CLECs' switched access services. Testimony in the Access Charge Investigation establishes that
21 intrastate switched access service provided by every LEC is a non-competitive, bottleneck
22 service.³

23
24 ² In The Matter Of The Investigation Of The Cost Of Telecommunications Access, Docket No.
RT-00000H-97-0137 and T-00000D-00-0672, (the "Access Charge Investigation").

25 ³ AT&T witness Dr. Debra Aron, testified as follows:

26 **Q: SHOULD CLEC RATES BE CAPPED AT THE LEVEL OF THE ILEC
WITH WHICH THEY COMPETE?**

1 Cox Arizona Telcom, L.L.C. ("Cox") is a CLEC which provides switched access services
2 to IXC's in the State of Arizona. If QCC (or any IXC) wishes to provide long distance services to
3 an end user for a call that originates or terminates on the Cox network, QCC is required to use
4 Cox's switched access service and to pay Cox's tariff rates. By its Application, Cox proposes to
5 amend its switched access service tariff in a manner that will provide select IXC's (certainly not
6 all IXC's) significantly lower rates for switched access services in Arizona based on the purchase
7 of wholly unrelated competitive services, which may have been provided in other states or as an
8 interstate service. Disparities in switched access costs among IXC's will directly affect QCC's
9 bottom line and its ability to compete in the long distance market. As discussed below in QCC's
10 Motion for Suspension of Cox's Tariff, significant factual and legal issues are presented by
11 Cox's proposed tariff revisions. Disparities based on unreasonable distinctions are unjust,
12 unreasonable, and unlawfully discriminatory.

13 Cox's Application will affect the rates charged to QCC and to QCC's IXC competitors.
14 QCC has a direct and substantial interest in Cox's Application, and QCC will be potentially
15 adversely affected without its intervention. To QCC's knowledge, no other carriers have
16 intervened in this proceeding, so the interests and perspective of IXC's will not be adequately

17
18 A: Yes.

19 **Q: BUT AREN'T CLEC ACCESS RATES DISCIPLINED BY COMPETITION?**
20 **A.** No, they are not. CLECs, as well as ILECs, possess market power in the provision of
21 switched access service. The fact that CLECs face extensive competition in the retail
22 market for *local exchange service* does not render the market for wholesale *switched*
23 *access service* competitive. This is because (i) IXC's cannot choose which local carrier will
24 originate or terminate their end users' calls; (ii) the party that does make the choice of local
25 carriers (the IXC's end-use customer or the person the customer calls) is not the party that
26 pays for switched access service (the IXC); and (iii) regulatory restrictions on long distance
price de-averaging, as well as logistical restrictions on doing so prevent IXC's from
charging a customer more for a particular call based on the access charges that will apply to
that specific call; therefore IXC's cannot send a price signal to the end users to discourage
them from choosing (or calling people who choose) LEC's with high access charges.
Direct Testimony of Dr. Debra J. Aron, Access Charges Investigation, Docket No. RT-00000H-
97-0137 and T-00000D-00-0672, December 1, 2009, p. 86.

1 represented without participation by QCC. Granting QCC's application for intervention will not
2 unduly broaden the issues presented. QCC's application for intervention should be approved.

3
4 **MOTION TO SUSPEND COX'S TARIFF REVISION AND TO HOLD**
5 **HEARINGS TO DETERMINE WHETHER THE PROPOSED TARIFF IS JUST,**
6 **REASONABLE, AND NON-DISCRIMINATORY**

7 Qwest Communications Company, LLC ("QCC") moves for an order suspending Cox's
8 proposed tariff revision, pursuant to A.R.S. Section 40-250. QCC further requests that a hearing
9 be held to determine whether the proposed tariff revisions are just, reasonable, and non-
10 discriminatory.

11 Cox proposes to amend its intrastate switched access rates by providing a graduated scale
12 of discounts that range as high as 65%. The level of discount depends on the amount of
13 "Dedicated and Ethernet Services that the [IXC] purchases" on a monthly basis.⁴ The proposed
14 tariff does not give an explanation of "dedicated" or "ethernet" services; however, upon
15 information and belief, "dedicated service" likely is synonymous with special access. Special
16 access is a private line that directly connects the IXC network to its customer, bypassing the
17 LEC's switching service. The provision of special access has no bearing on Cox's provision of
18 switched access service. QCC is aware of no study or analysis supporting a conclusion that the
19 cost of providing tandem-routed switched access to a particular IXC is in any way reduced by the
20 LEC providing special access circuits to such IXC. Further, while switched access is undeniably
21 a non-competitive, bottleneck service, special access is considered to be a competitive service.
22 In the Access Charges Investigation, Cox's Regional Vice President agreed, in response to cross-
23 examination by the undersigned:

24 Q. Now, without discussing Cox's specific rate, I will just throw
25 out a hypothetical and say, we will say for talking purposes here that Cox's
intrastate termination access charges is 5 cents a minute. Okay? Is the

26 ⁴ Cox proposed Tariff No. 2, Second Revised Page 70, Section 6.2.1.

1 sense of Cox's response here, does it mean that if AT&T purchases more of
2 some other service -- and that is in this case special access -- that the actual
rate for switched access goes down or is discounted?

3 A. The effective rate for the switched access would be discounted
4 based on the purchase of special access services.

5 Q. Are there any other services that the agreement might address
that would discount Cox's switched access rate?

6 A. I don't have the contract in front of me, but there may be other
7 competitive services included in that agreement.

8 Q. And I think you are right when you say other competitive
9 services. Do you agree that special access is a service that a carrier can
choose to purchase either from Cox or from some other carrier, depending
upon the circumstances?

10 A. Yes. The services, the special access services or transport services, if you
11 will, that we offer are also offered by other carriers, including Qwest.⁵

12 Special access is provided on both an intrastate and interstate basis. Cox's proposed
13 tariff does not distinguish between interstate and intrastate jurisdiction special access. Thus, Cox
14 apparently is proposing to discount the rate for its non-competitive intrastate switched access
15 based upon the IXC customer's purchases of wholly-unrelated, competitive, non-jurisdictional
16 services. QCC disputes the appropriateness or lawfulness of this practice, and urges the
17 Commission to investigate the matter.

18 It is less clear what Cox means by "ethernet service." QCC believes that Cox provides
19 ethernet technology to customers through metro optical ethernet networks, enabling internet
20 access and wide area networking to customers. These types of services are generally considered
21 competitive, and interstate. This proposal would again discount non-competitive intrastate
22 switched access rates, based upon the amount of purchases by the customer of competitive,
23 interstate services.

24 Furthermore, it is not clear whether the purchases of "dedicated and ethernet services"

25 _____
26 ⁵ March 16, 2010 Hearing transcript, Access Charge Investigation, Docket No. RT-00000H-97-
0137 and T-00000D-00-0672, Tr. 240-241.

1 that qualify the purchaser to receive a discount for switched access services in Arizona, must
2 have been based on Arizona transactions. Thus, purchase of ethernet services from Cox in
3 Georgia, for example, may result in a discount in the Arizona switched access rates.

4 Cox's proposal is not clear about the nature of the services that qualify for the discount,
5 and how those discounts are calculated. A hearing on those factual questions would benefit the
6 Commission in its evaluation.

7 Significant factual, legal, and policy questions are raised by Cox's proposed tariff
8 revisions. These include, but are not limited to, the following:

9 **1) *Is it lawful to condition a discount to the rate for a bottleneck service on the***
10 ***purchase of large quantities of an unrelated, competitive, non-jurisdictional service?***

11 Cox proposes to lower the price of its noncompetitive services (those that IXCs have no
12 choice to forgo) in exchange for the purchase of competitive services (those that IXCs can get
13 from other vendors). Such arrangements are of doubtful lawfulness under the "just and
14 reasonable" standard. Under Arizona law, all providers of switched access (including Cox and
15 other CLECs) are required to provide switched access on a nondiscriminatory basis.⁶ It is
16 unlawful for Cox to favor one class of switched access customers over another, absent
17 demonstration of a sound economic basis for such distinctions. As discussed above, Cox's cost
18 of providing switched access to an IXC (e.g., AT&T) does not vary depending upon whether
19 AT&T purchases one special access circuit from Cox or whether it purchases ten thousand
20 special access circuits. Cox should not be able to discriminate in favor of AT&T when there is
21 no difference in cost to provide the same intrastate switched access to AT&T as it provides to
22 QCC, or any IXC. As this matter proceeds to hearing, Cox should be required to identify and
23 support its cost or other economic basis for conditioning this potentially-massive rate distinction
24 on the purchase of unrelated special access services. In the absence of such a showing, the tariff
25 should be rejected.

26 ⁶ A.A.C. R14-2-1111. Requirement for IntraLATA Equal Access

1 Further, it is unclear whether a national IXC such as AT&T might qualify for the
2 switched access discount in Arizona based on its purchases of interstate special access circuits
3 provisioned in some other state. Discounts based on such purchases are unjust, unreasonable,
4 and discriminatory, and any tariff revisions featuring such discounts should be rejected.

5 2) ***Is this tariff discount plan designed to favor a single IXC?***

6 To qualify for *any* discount off of Cox's tariff switched access rates, an IXC must
7 purchase at least \$575,000 worth of "Dedicated and Ethernet" services *each month*.
8 Significantly larger discounts are provided, culminating in a potential discount of 65%, as the
9 IXC purchases more and more special access from Cox each month. It should be obvious from
10 the face of the proposed tariff that very few IXCs are large enough to require the purchase of so
11 many special access circuits from Cox on a monthly basis. In evaluating Cox's proposed
12 discount program, the Commission should fully investigate current purchase levels from Arizona
13 IXCs to determine whether this program will benefit only a single IXC, a small subset of IXCs or
14 numerous IXCs. On information and belief, QCC assumes that it is possible that only one IXC
15 will benefit from the purported discount program, in which case the Commission should be
16 particularly concerned about Cox's motivation and good faith in presenting this program as a
17 ubiquitously available alternative. The Commission should likewise scrutinize how this proposal
18 relates to any unfiled, off-tariff agreements, if any, that Cox may have entered with Arizona
19 IXCs.

20 3) ***Is Cox simply attempting an end-run around the Commission's pending Access***
21 ***Charge Investigation through this tariff filing?***

22 Cox's proposal appears to be an end-run around the Access Charge Investigation that the
23 Commission is currently conducting. In the Access Charge Investigation, the Commission is
24 investigating whether LECs should be permitted to alter the rates specified in their respective
25 filed tariffs by private contracts. The Qwest companies' advocacy in the Access Charge
26 Investigation is that such contracts should be published, and the contract terms and conditions

1 should be available to all carriers. Important to this matter, the Qwest companies also advocate
2 that LECs should be prohibited from discounting switched access rates based upon purchases of
3 competitive services or services that are not jurisdictionally Arizona intrastate.⁷ At hearing, the
4 Administrative Law Judge pointedly addressed this issue, which is clearly pending before the
5 Commission.⁸ Cox's filing appears to be a transparent attempt to lock its disputed practice into a
6 tariff, hoping that it will become effective by law, so that Cox may claim legitimacy.

7 For the foregoing reasons, the Commission should suspend Cox's proposed tariff
8 revision, and establish a procedural schedule leading to a hearing, for determination of whether
9 the proposal is just, reasonable, and non-discriminatory. Permitting Cox's tariff to go into effect
10 prior to resolution of this issue would be inappropriate.

11 QCC respectfully requests expedited consideration of its motion. The tariff was filed on
12

13 ⁷ QCC witness Lisa Hensley Eckert testified in the Access Charge Investigation as follows:

14 **Q. IS IT APPROPRIATE FOR INTRASTATE SWITCHED ACCESS RATES**
15 **TO BE INCLUDED IN VOLUME DISCOUNT AGREEMENTS FOR THE**
16 **PURCHASE OF INTERSTATE SERVICES?**

17 **A. No. Such bundling of services into bulk purchase price discount arrangements affect and**
18 **obscure the price of intrastate switched access. Not only is it difficult to determine the actual**
19 **amount of discount in such agreements—it is also unlikely that the duty of nondiscrimination can**
20 **be satisfied when the price of a bottleneck monopoly service varies and depends upon the**
21 **purchase of unrelated, competitive services.**

22 **The linking of the two purchases is not supportable. As mentioned before, special access is a**
23 **switched access bypass product. The two products are not logically dependant upon one**
24 **another- that is an IXC does not need to purchase special access to reach an end user**
25 **through a switch. An IXC may choose to do so because they can avoid tandem switching**
26 **charges- or the volumes of traffic to that end user indicate that a dedicated facility is necessary.**
27 **Volume discounts for special access based on special access purchases have been part of contract**
28 **tariffs, and part of special access pricing. However, special access is a competitive service,**
29 **and as described earlier, switched access is a terminating monopoly service. Using a**
30 **competitive service as a basis for offering a discount on a monopoly service obfuscates the**
31 **real price of the underlying services—and allows for discrimination. For these reasons, the rates**
32 **for switched access service, whether offered by contract, tariff, or some combination of the two,**
33 **must stand on their own, and not be affected by the purchase of unrelated services.**

34 **Direct Testimony of Qwest witness Lisa Hensley Eckert, Access Charges Investigation, Docket**
35 **No. RT-00000H-97-0137 and T-00000D-00-0672, December 1, 2009, p. 14.**

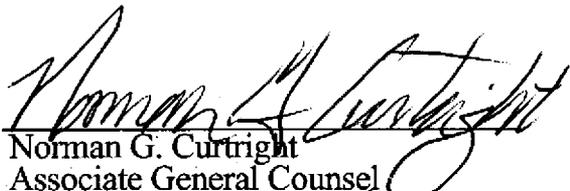
36 ⁸ **March 18, 2010 Hearing Transcript, Access Charges Investigation, Docket No. RT-00000H-97-**
0137 and T-00000D-00-0672, Tr. 570-571.

1 April 6, 2010, and absent suspension, it would otherwise become effective thirty (30) days
2 thereafter.

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DATED this 22nd day of April, 2010.

QWEST COMMUNICATIONS COMPANY,
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1 **Original and 13 copies of the foregoing**
2 **were filed this 22nd day of April, 2010 with:**

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