BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF QWEST CORPORATION'S
FILING OF RENEWED PRICE REGULATION
PLAN.

IN THE MATTER OF THE INVESTIGATION OF
THE COST OF TELECOMMUNICATIONS
ACCESS.

BY THE COMMISSION:

On July 1, 2003, Qwest Corporation ("Qwest") filed the Qwest Renewed Price Regulation Plan pursuant to the provisions of the Second Revised Settlement Agreement approved in Decision No. 63487 on March 30, 2001.

By Procedural Order dated November 17, 2003, the Arizona Corporation Commission ("Commission") determined that Phase I of the Access Charge Docket, which addresses Qwest's access charges, should be considered in conjunction with the Price Cap Plan Docket.

By Procedural Order dated June 30, 2004, the Commission established the procedural schedule in this matter. The June 30, 2004 Procedural Order contained the following provision:

IT IS FURTHER ORDERED that all testimony and evidence will be filed and entered "on the public record" unless a prior determination has been made by the Administrative Law Judge or Commission that the material is confidential.

A Procedural Conference convened on July 20, 2004, for the purpose of discussing procedures pertaining to the treatment of testimony and exhibits claimed to be confidential.

The Commission's goal is to ensure that as much information as possible is "on the public record." At the same time, the Commission must balance the need in a competitive environment to
safeguard information that is legitimately proprietary with the need to foster a transparent process.

AT&T of the Mountain States, Inc. expressed the concern that the language in the June 30, 2004 Procedural Order could be interpreted to release parties from their obligations under their protective agreements. Additionally, all parties expressed concern that because the procedural schedule in this matter is somewhat accelerated over a traditional rate case, it would be impractical and inefficient for the Commission to attempt to determine in advance of the filing deadlines whether the information is legitimately confidential. No party expressed a belief that any other party has abused its obligation under the protective agreement to make a good faith effort to identify and mark only that information that is legitimately confidential.

In our June 30, 2004 Procedural Order it was not the intent of the Commission to have parties publicly file information that is claimed to be confidential in contravention of the protective agreements. However, based upon the discussion during the July 20, 2004 Procedural Conference, it appears in this case, that it may be highly cumbersome and inefficient to make a pre-determination of confidentiality. The Commission does not want to hinder the exchange of information, nor does it want to make participation in this docket unduly burdensome.

Consequently, the provision in the June 30, 2004 Procedural Order that requires a prior determination by the Commission of confidentiality should be eliminated. The parties shall follow the terms of their Protective Agreements, which we understand provide that documents stamped "Confidential Information" will not be filed in the public record unless the party who wishes to utilize the information gives the party claiming confidentiality five business days written notice. If within the five days the party claiming confidentiality has not filed a motion to retain the confidential designation, the information may become part of the public record. Thus, the Commission would expect that if a party submits redacted testimony or exhibits containing confidential information, that party concurs that the information is confidential. The Commission further expects that the parties will continue to use their best efforts to resolve any disputes regarding confidentiality amongst

1 Other parties interpreted the language to require them to seek a pre-determination that information is confidential prior to filing redacted testimony.
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themselves prior to testimony filing deadlines and to take care to redact only that information that is confidential.

Consistent with prior practice, parties who want to use confidential information shall act according to the terms of their protective agreements, shall file public copies of redacted versions of the testimony and exhibits, and shall provide non-redacted versions of the testimony to all parties who have executed the protective agreement, the Administrative Law Judge, and the Commissioners. To assist the Commissioners, Administrative Law Judge, parties who are not subject to the protective order, as well as the public, any party who submits testimony/exhibits that contain confidential information shall simultaneously file a brief explanation of the legal basis for concluding that the information is confidential.

Without disclosing the information, the statement shall contain enough information that interested parties can understand the legal basis why the information is not being filed publicly. Such statement is intended to allow parties who do not have prior access to the confidential information to determine if they agree such information is of the type that should be protected. In the event of a challenge to the confidential designation, through an appropriate motion or request, the information should remain confidential, and the Commission will convene a Procedural Conference to determine whether such information should remain protected.

IT IS THEREFORE ORDERED that the following language “IT IS FURTHER ORDERED that all testimony and evidence will be filed and entered “on the public record” unless a prior determination has been made by the Administrative Law Judge or Commission that the material is confidential” contained in our June 30, 2004 Procedural Order, shall be deleted.

IT IS FURTHER ORDERED that any party who submits testimony or exhibits that contain confidential information shall simultaneously file a brief explanation of the legal basis for concluding that the information is confidential.

IT IS FURTHER ORDERED that all other terms of the June 30, 2004 Procedural Order shall remain in effect.

IT IS FURTHER ORDERED the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized Communications) continues to apply to this proceeding.
IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 29 day of July, 2004.

JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

Copy of the foregoing mailed/delivered this 29 day of July, to:

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