BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. T-00000D-00-0672

RUCO's BRIEF ON PROCEDURAL MATTERS

Pursuant to the Administrative Law Judge's request, the Residential Utility Consumer Office ("RUCO") files this brief on certain procedural matters.

BACKGROUND

At the Arizona Corporation Commission's ("Commission") August 22, 2000 Open Meeting, at which the Commission approved new rates for Tabletop Telephone Company (Docket No. T-02724A-99-0595), then-Chairman Kunasek requested an investigation into whether access charges for Arizona utilities reflect the cost of access.\(^1\) See September 5, 2000 Memo from Deborah Scott, Director of Utilities Division ("Staff") opening this Docket No. T-00000D-00-0672. By Procedural Order dated December 3, 2001, parties were directed to

\(^1\) Qwest had opposed the intrastate access charges that the Commission ultimately adopted for Table Top, arguing that they were not consistent with the access charge rates for other comparable companies in Arizona. See Decision No. 62840, pg. 3 (August 24, 2000).
provide written comments on a number of issues/questions that had been put forth by Staff.

After parties filed their responses, Staff, on March 28, 2002, filed its procedural recommendations. By Procedural Order of May 21, 2002, the Commission adopted Staff’s proposed procedural schedule. RUO and other intervenors filed direct testimony on June 28, 2002. By Procedural Order of July 8, 2002, the procedural schedule in this matter was suspended.

On September 26, 2003, Staff filed a Request for and Expedited Procedural Conference ("Motion") pursuant to the Commission’s directive at the September 19, 2003 Open Meeting to review Qwest’s intrastate access charges on an expedited basis. Staff’s Motion raised several issues that it proposed be considered at the procedural conference. A procedural conference was held on October 14, 2003. At the procedural conference, the Administrative Law Judge requested briefs from the parties on the following issues: 1) the legal requirements for changing access charges pursuant to Scates v. Ariz. Corp. Comm’n, et al. and possible alternatives to deal with such requirements; 2) whether the proceeding should be bifurcated to consider Qwest’s access charges apart from those of other local exchange carriers ("LEC"); and 3) scheduling proposals for both a bifurcated and non-bifurcated proceeding.

LEGAL REQUIREMENTS AND ALTERNATIVES TO COMPLY

The Commission is required to determine the fair value of a public service corporation’s rate base as part of a proceeding in which the Commission established rates. If this proceeding will result in modifications to any public service companies’ access charges, the requirement to determine fair value would apply. However, the Commission can explore policy issues regarding access charges in this proceeding without determining any utility’s fair value
rate base. RU CO recommends that the Commission’s consideration of access charges proceed in two phases, the first to deal with the general policy, and the second to address specific LECs’ access charges based on that general policy and in compliance with the fair value requirement.


A revenue neutral “rebalancing” of rates, whereby rates for some services are increased and rates for other services are decreased in an approximately equal amount, is not exempt from the fair value requirement. The Constitution speaks of “rates and charges” that are to be set with the assistance of a fair value determination. Art. XV, §§ 3, 14. The plain meaning of the terms “rates” and “charges” are prices customers are required to pay for particular services. Even if a rate “rebalancing” holds the overall revenue level of the utility constant, the changes to “rates and charges” for particular services triggers the fair value requirement.
In light of these constitutionally-based requirements, RUČO recommends that the Commission examine access rates in two phases. In the first phase, the Commission should undertake a generic policy examination of access charges. Topics to be addressed could include whether intrastate access charges should be set at rates equal to interstate access charges (or perhaps some percentage above interstate rates), the degree to which costs of the local loop should be recovered from access services, and what the likely impacts would be on affordability of other services if intrastate access charges were decreased. The first phase could result in policy determinations by the Commission, which could then be implemented in the second phase. The first phase would not need to address Qwest's access charges individually, as it would examine policy alternatives on an industry-wide basis. The second phase would consist of company-specific proceedings in which the Commission can ascertain fair value, evaluate the degree to which the general policies determined in the first phase are suitable for the particular utility, and implement new access rates as appropriate.

Examining access rate policy on a generic basis has several benefits. First, it allows the Commission to consider the pros and cons of alternative access pricing policies with the input of all interested parties. Rural LECs, which might not participate in a Qwest-only proceeding, would be at the table and provide input to the Commission as to how implementation of certain policies might impact them and their customers in ways that differ from the impact of those policies on Qwest and its customers. Second, it assures that that a LEC, which is both a seller of access services and a buyer of other LECs' access services, advocate a consistent position on policy, rather than one position when it is the seller, and a contrary position when it is a buyer of access services. Third, after the Commission determines its general policies on access charges, it can implement those policies for the
various LEC on a more streamlined basis, not having to start again at square one in evaluating each LECs current access charges, costs to be recovered through access charges, and impacts of access charge reform on customers. Instead, the Commission can evaluate how its general policy can best be implemented for each LEC. Fourth, examining access charge policy generically allows the proceeding to focus precisely on a single issue, rather than requiring the Commission to attempt to evaluate access policies while at the same time attempting to resolve other disputed issues relevant to determinations of fair value for a particular utility.

SCHEDULING

The generic first phase can pick up where the previous schedule left off, permitting parties to update their filings within 30 days, then following a schedule similar to that of the May 21, 2002 Procedural Order (Staff testimony 30 days later, Rebuttal Testimony 30 days later, Surrebuttal Testimony 14 days later, Hearing 10 days after that). The second-phase proceedings for LECs that require adjustments to access charges can be determined after the first phase of the proceeding is concluded. After the first phase is completed, Qwest's access charges can be addressed as part of the review of its price regulation plan.

RESPECTFULLY SUBMITTED this 3rd day of November, 2003.

Scott S. Wakefield
Chief Counsel
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<td>RCN Telecom Services, Inc.</td>
<td>105 Carnegie Center, Princeton, NJ 08540</td>
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<td>2</td>
<td>Reflex Communications, Inc.</td>
<td>83 South King Street, Suite 106, Seattle, WA 98104</td>
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<td>Rhythm Links, Inc.</td>
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<td>Sprint Communications Company</td>
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<td>5</td>
<td>TCG Phoenix</td>
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<td>7</td>
<td>Verizon Select Services, Inc.</td>
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<td>Winstar Wireless of Arizona</td>
<td>1577 Spring Hill Road, Suite 200, Phoenix, AZ 85034</td>
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<td>9</td>
<td>XO Arizona, Inc./NextLink Long Distance</td>
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<td>360 Networks (USA) Inc.</td>
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<td>Allcom USA</td>
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<td>12</td>
<td>Alliance Group Services, Inc.</td>
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<td>American Telephone Network, Inc.</td>
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<td>Archtel, Inc.</td>
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<td>McLeod USA Communications</td>
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<td>Communique Telecommunications, Inc.</td>
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<td>Enhanced Communications Network</td>
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<td>Global Crossing Telecommunications, Inc.</td>
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<td>GST Net, Inc.</td>
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<td>IG2, Inc.</td>
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<td>22</td>
<td>Independent Network Services Corp.</td>
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<td>VYVX, LLC</td>
<td>Williams Local Network, Inc. One Williams Center, MD 29-1</td>
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<td>10</td>
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