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

BY THE COMMISSION:

On September 5, 2000, the Commission’s Utilities Division Staff (“Staff”) filed a Request for
an Investigatory Docket Regarding the Cost of Access (“Access Charge Docket”) to determine if
access charges currently in effect reflect cost of access.

By Procedural Order issued July 8, 2002, Staff’s Motion to Suspend the Procedural Schedule
in this matter was granted.

A procedural conference was conducted in the Access Charge Docket on October 14, 2003.
As a result of discussions during that conference, parties were directed to file briefs on the following
issues: whether a fair value determination is required in this docket prior to ordering a reduction in
access charges; and whether consideration of Qwest Corporation’s (“Qwest’s”) access charges should
be bifurcated from a review of access charges for independent telephone companies.

In accordance with that directive, briefs were filed on November 3, 2003 by Qwest, Staff,
AT&T Communications of the Mountain States, Inc. (“AT&T”), the Residential Utility Consumer
Office (“RUO”), Sprint Communications Company, LLC (“Sprint”), WorldCom, Inc., on behalf of
its operating subsidiaries (“MCI”), Cox Arizona Telecom, LLC (“Cox”), Eschelon Telecom of
Arizona, Inc. (“Eschelon”), and the Arizona Local Exchange Carriers Association (“ALECA”){1}. Eschelon also filed an application to intervene on November 3, 2003.

{1} ALECA represents most of the independent local exchange carriers in Arizona.
Fair Value Requirement

All parties appear to agree that the Commission may not simply reduce access charges in the Access Charge Docket outside of a fair value determination case or without a corresponding revenue neutral adjustment. The parties generally agree that, absent the presence of an emergency that requires interim rates or an existing adjustor mechanism, the Arizona Constitution and various court decisions require the Commission to make a fair value finding when establishing rates. In *Scates v. Arizona Corporation Comm'n*, 118 Ariz. 531, 573 P.2d 612 (App. 1978), the Arizona Court of Appeals reversed a Commission Decision that increased charges for installation, moving and changing telephone service. The Court held that, pursuant to Article XV, §§ 3 and 14 of the Arizona Constitution, the Commission was required to determine the fair value of the company’s rate base and to consider the effect of the increase on the company’s rate of return prior to adjusting rates. See also, *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 294 P.2d 378 (1956). Subsequently, the Arizona Supreme Court clarified that although the Commission is not necessarily required to use fair value as the sole basis for setting rates, the Commission must make a fair value determination of the company’s property as part of its rate setting authority under the Arizona Constitution. *U.S. West Communications, Inc. v. Arizona Corporation Comm'n*, 201 Ariz. 242, 34 P.3d 351 (2001).

With the exception of RUCO, the parties suggest that the relevant court decisions do not preclude the Commission from adjusting access rates outside of a full rate case, as long as the process employed by the Commission does not affect Qwest’s revenues or ultimate rate of return. Qwest contends that any additional access charge reductions (beyond the $15 million required under Qwest’s current price cap plan) must be accomplished in a revenue-neutral manner, or within the context of a rate proceeding (such as the adoption of a revised price cap plan).

Alternatively, Qwest asserts that the Commission could reduce access charges to interstate levels in conjunction with implementation of an end-user charge to offset the revenue loss from the access charge reduction. Another alternative suggested by Qwest is to use the Access Charge Docket to identify issues relevant to access reform, including an analysis of current access rates of all parties,

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2 RUCO argues that even if the result of a rate “rebalancing” is revenue neutral, Article XV, § 14 of the Arizona Constitution requires that any adjustment of rates and charges must be set with the assistance of a fair value determination.
and to develop policies and procedures that can be implemented through rate proceedings to
effectuate the rate changes.

**Bifurcation of Qwest and Independent Telephone Companies**

Staff, the CLECs, and ALECA request that the Access Charge Docket be separated into two phases. Staff contends that the Commission requested expedited consideration of Qwest's access charges during the Commission's deliberations concerning Qwest's 271 application and that there are significant differences between Qwest and the independent telephone companies (e.g., access charges comprise a significantly larger percentage of the independents' revenues; Qwest has requested a review of its current price cap plan under which access charges have been reduced pursuant to settlement; and new issues and policy concerns unique to the independent companies will likely arise). WorldCom also points out that the vast majority of traffic for interexchange carriers is handled by Qwest. ALECA agrees that bifurcation is appropriate for many of the same reasons. ALECA also claims that consideration of the independent companies' access charges with Qwest would result in unnecessary costs to the smaller companies and would likely delay a determination of Qwest's access rates.

Qwest and RUCO believe that the Access Charge Docket should not be bifurcated. Qwest contends that this case should remain a generic docket because the issues facing Qwest and the independent telephone companies are similar in nature. Qwest asserts that separation into two phases will result in a wasteful duplication of effort and inconsistency between the treatment afforded to Qwest and other carriers. RUCO agrees with Qwest's position and, in addition, claims that bifurcation will result in inefficiencies because parties may end up with different positions in the two phases depending on whether they are buyers or sellers of access charges.

**Conclusion**

The general consensus of all parties is that access charges may not be reduced outside the context of a rate setting proceeding unless, at a minimum, a revenue-neutral mechanism is developed. Due to these limitations, and because Qwest has requested a review of its current rate cap plan in Docket No. T-01051B-03-0454, it is appropriate to consider Qwest's access charges in conjunction with its rate cap review, where all of Qwest's rates will be analyzed. However, the independent
DOCKET NO. T-00000D-00-0672 ET AL.

telephone company access charges must be considered separately because there are no existing price cap plans or rate cases currently pending for those entities.

Accordingly, the Access Charge Docket will be bifurcated into two phases. Phase I will address Qwest’s access charges in combination with the review of Qwest’s price cap plan. Phase II will consider access charges for all other telephone carriers that provide access services. A subsequent Procedural Order will be issued scheduling testimony and hearing dates for both phases of the proceeding.

IT IS THEREFORE ORDERED that the Access Charge Docket will be bifurcated into two phases.

IT IS FURTHER ORDERED that Phase I of the Access Charge Docket will address Qwest’s access charges in conjunction with the review of Qwest’s current price cap plan in Docket No. T-01051B-03-0454.

IT IS FURTHER ORDERED that Phase II of the Access Charge Docket will consider access charges for all other telephone carriers that provide access services.

IT IS FURTHER ORDERED that Eschelon Telecom of Arizona, Inc.’s application for intervention is granted.

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 17th day of November, 2003.

[Signature]

DWIGHT D. NODES
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE
Copies of the foregoing mailed/delivered this 17th day of November, 2003 to:

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**DOCKET NO. T-00000D-00-0672**

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