Pursuant to the Procedural Order dated February 3, 2009, Qwest Corporation ("Qwest") files comments on whether Qwest's intrastate access rates should be included as part of Phase II of the inquiry regarding access costs ("Access Charges Docket"), and on the scope of Phase II to include competitive local exchange carriers ("CLECs").

INTRODUCTION

Qwest opposes inclusion of its access rates in Phase II, for the reasons stated below. Qwest's intrastate access rates are already the lowest in the state, and have been reduced twice before. No other carriers' rates have been analyzed by the Commission. Qwest does not believe
that its access charges should be immune from analysis, but that no compelling rationale exists for Qwest’s rates to be examined again in Phase II. Inclusion of Qwest in Phase II would contradict the Arizona Corporation Commission’s previous actions splitting the docket into phases, and would subject Qwest to competitive harm because its switched access rates have already been reduced in Phase I. Further, there is no data available to the Commission upon which it may make a reasoned decision to reverse the course it set previously. Inclusion of Qwest’s rates in Phase II will only slow down progress on that Phase, which was intended to address all carriers other than Qwest. The interexchange carriers (IXC’s) have not demonstrated the urgency of their cause. The IXCs signed off on the resolution of the access charge reduction for Qwest in Phase I, and all of them ignored Phase II for years. The Commission should proceed with Phase II as originally planned, including an examination of the rates of CLECs, which now are powerful competitors handling significant amounts of access traffic.

A. The Commission’s Plan for Comprehensive Review, Which Split the Investigation Into Two Phases, Should be Implemented as Planned.

The Access Charges Docket had languished for approximately three years until the Commission split the proceeding into two Phases. (Procedural Order, November 17, 2003). Phase I was ordered to consider access charges in combination with the review of Qwest’s Price Cap Plan. Phase II was supposed to consider access charges for all other telephone carriers that provide access services. Phase I was completed by the Commission, when the Commission approved Qwest’s Renewed Price Cap Plan. Decision No. 68604. As stated by the Procedural Order entered in these dockets dated December 19, 2008:

Phase I of the Access Charge Docket, addressed Qwest Corporation’s (“Qwest”) access charges, and was consolidated with, and resolved, in conjunction with Qwest’s rate cap review. Phase II of the Access Charge Docket is intended to address access charges for all other telephone companies that provide access services. (Emphasis added).
It is telling that the resolution of the access charges issue in Phase I does not provide that further
analysis of Qwest's access charges should be undertaken in Phase II, or otherwise.

The Commission determined that it would address all carriers other than Qwest in Phase
II. This bifurcation was urged by the Commission Staff, ALECA, CLECs, and AT&T. The
access charges regimes of Qwest and all other carriers have been treated separately since then,
and no party has suggested that there was not a separate track, until AT&T made its last-filed
comments.

In AT&T's Comments filed January 26, 2009, and in the statements of its counsel at the
Procedural Conference on January 29, 2009, AT&T attempted to suggest that the bifurcation
order has somehow been superseded or undone by the consolidation of Qwest's Price Cap Plan
with Phase I of this docket. AT&T's suggestion is not supported by the procedural record. The
order of the Commission consolidating the Price Cap Plan docket with the Access Charges
Docket is the Procedural Order dated November 17, 2003 that bifurcated the Access Charges
Docket into separate phases. Thus, it is obviously wrong to consider that the Price Cap Plan
docket is consolidated with the Access Charges Docket for any purposes other than for the
separate Phase I proceeding, which is over. AT&T's citation to the "Commission records" is a
flawed reference and does not lend any support to the notion that Qwest's Price Cap Plan and
Phase II of the Access Charges Docket are already consolidated.¹

AT&T's interpretation of the Procedural Order that bifurcated the Access Charges
Docket into Phases I and II further attempts to revise history by suggesting that although there
were two phases, they were meant to be conducted "in the context of different, but consolidated
proceedings." AT&T Comments, p. 3, lines 16-20. That is a strange interpretation, requiring us

¹ AT&T stated that it was quoting "directly from the Commission records" (Proc. Conf. TR 29:9-15) that: "Per Decision No. 67047, dated 6/18/04 T-01051B-03-0454 and T-0000D-00-0672 are CONSOLIDATED." However, investigation reveals that the "Commission records" AT&T refers to is merely an unofficial navigational aid in the Commission's E-Docket system. As it turns out, the note is incorrect. A complete reading of Decision No. 67047 reveals that the Decision does not address the consolidation of the two dockets.
to believe that the Commission bifurcated the proceedings and in the same order consolidated them for purposes of testimony and hearings. No subsequent proceeding or order of the Commission, or other pleading by AT&T or any other party, supports that interpretation.

Ultimately, AT&T confuses two different procedural questions. AT&T states that Qwest is part of this proceeding, but does not differentiate that this proceeding has been split into two parts, by design. Qwest’s part, Phase I, has been completed, and Phase II is for the other carriers.

B. No Compelling Rationale or Data Have Been Provided for Including Qwest’s Access Charges For a Possible Third Round of Reductions, While Other Carriers Rates Have Remained Untouched To-Date

The Commission deliberately determined that the Access Charges Docket should be bifurcated between Qwest and all other carriers, as shown above. Before that determination should be reversed, there should be some compelling reasons established. The reasons stated by AT&T fall well short of compelling, and do not address any of the reasons why the Docket was bifurcated in the first instance.

1. Qwest’s Intrastate Switched Access Rates Have Been Reduced Time and Again, While No Other Carriers’ Rates, All of Which Are Higher, Have Been Reduced

Qwest’s intrastate switched access rates are the lowest in Arizona. Qwest has reduced its Arizona switched access charges time and time again. The following illustrates the amounts of access charge reductions Qwest has undertaken in relation to other carriers since the Commission opened it investigation into the cost of telecommunications access:
None of the other LECs in the state have reduced their access charge tariff rates, even though they are substantially higher than Qwest’s.

It makes little sense to revisit the oft-before visited level of Qwest’s switched access rates when those rates are already the lowest, and Qwest is not a monopoly provider of local services.

Commenters Have Previously Suggested that the Objective of Phase II Should Be For the Other Carriers to Reduce Their Access Charges to Qwest’s Level; Including Qwest in Phase II Will Only Create A Greater Disparity and Increase the Size of the Problem for Other Carriers

As noted above, Qwest’s rate is lower, sometimes substantially lower than the other carriers. Qwest’s access rates have been described in the Phase II Access Charges Docket as the “target” for reductions other carriers should make. As Verizon states in the Phase II proceeding, “As a starting point for access reform in Arizona, all carriers rates should be reduced to Qwest’s current intrastate levels . . .” See Initial Comments of Verizon, Docket Nos. RT-00000H-97-0137 and T-00000D-00-0672, October 7, 2008, page.2. Reaching that lower rate will be difficult, as was recognized by the Staff when it proposed bifurcation of the Docket. At that time, COX filed a tariff to restructure its access rates on 11/21/05. However, the amount of reduction in intrastate access charges, if any, could not be verified from COX’s filing.

2 Cox filed a tariff to restructure its access rates on 11/21/05. However, the amount of reduction in intrastate access charges, if any, could not be verified from Cox’s filing.
time, the Staff observed that there are significant differences between Qwest and the independent telephone companies. Among other differences, the independents' access charges comprise a significantly larger percentage of the independents' revenues. Procedural Order, Nov. 17, 2003, p. 3, lines 7-8. ALECA concurred, and asserted that by and large the independents have higher average loop costs, and that the potential impact of access rate reductions on the independent carriers is substantially greater than is the case of Qwest. ALECA Comments, November 4, 2003, p. 2. If Qwest's rates are the target that the other companies should strive to meet, further reductions in Qwest's rates will only make the challenge for those companies even harder.

3. Combining Qwest's Access Charges Investigation With the Phase II Proceeding Will Diffuse the Focus and Increase the Costs of the Phase II Proceeding

When it urged the Commission to bifurcate the Access Charges Docket, ALECA made the point that the dissimilarities between Qwest and the independent carriers supported bifurcation. ALECA argued that separate serial phases were necessary to assure that the parties' attention was properly focused on the particular issues of the independents. ALECA Comments, November 4, 2003, p. 2. Qwest believes that there is still merit in that concern. There are still meaningful differences between the average loop costs of the independents as a whole and Qwest, and the impact of access rate reductions on the independents will be proportionately greater to them.

In 2003 ALEC also was concerned that requiring the independents to participate in a consolidated proceeding, as compared to a phased proceeding, would require the independents to needlessly incur additional costs. ALECA Comments, November 4, 2003, p. 3. There is no reason to think that concern will have changed.

4. Qwest's Access Charges Revenues Have Declined Significantly in Amount and In Proportion to All Access Charges Assessed by LECs In Arizona
When the Access Charges Docket was bifurcated, a primary reason was the belief that "the vast majority of traffic for interexchange carriers is handled by Qwest." Procedural Order, November 17, 2003, p. 3, lines 11-12. Since 2003, however, major changes have occurred in the competitive landscape for local exchange services in Arizona. In Qwest's local service areas competition has flourished in all segments. In the Phoenix market, for example, it is well accepted that Cox Telcom is matching Qwest's customer counts.

5. The End of Qwest's Current Three Year Price Cap Plan Does Not Cause Qwest's Access Rates to Revert to Pre-Price Cap Plan Levels or Provide Any Other Basis for Hastened Review of Qwest's Access Charges

Qwest's current Price Cap Plan is nearing the end of its initial three year term. AT&T has seized upon that to lend support to its demand that Qwest's access charges must be analyzed again, out-of-turn. However, AT&T's arguments are based on a flawed understanding of the Price Cap Plan and Qwest's request for extension of that Plan.

First, Qwest's Price Cap Plan is not expiring, as AT&T has suggested. According to its terms, Qwest has the option of applying for the Plan to be extended. Qwest has done that, having filed its request for extension in June, 2008.

Second, the Price Cap Plan provides that at the end of the initial three year period, it continues in effect until the Commission acts. Thus, while Qwest's request for extension of the Plan is pending, the Plan does not end.

Third, the section of the Price Cap Plan Settlement Agreement regarding access charges reduction provides that "This shall be a permanent reduction in Switched Access Charges." Price Cap Plan Settlement Agreement, para. 8. Thus Qwest's access charges may not be increased again. AT&T's fears are unfounded.

Because the end of the initial period of Qwest's Price Cap Plan does not jeopardize the access charge reductions that have already been taken to Qwest's rates, there is not any urgency
created, and no cause to inject Qwest to the Phase II proceeding.

6. The IXC’s Argument to Include Qwest in Phase II Cannot Overcome the Unfairness of Their Proposal

Subjecting Qwest to another round of access charge reductions is simply unfair, in light of the facts stated above. Qwest’s rates are already the lowest; the amount of access traffic Qwest handles has diminished while other carriers have increased proportionately. The Commission set a procedural course for comprehensive examination of the access charges of all carriers, but only accomplished the mission as it relates to Qwest. Bluntly, it is not Qwest’s turn. However, in balancing the equities, the Commission should also consider the actions and inactions of the largest IXCs, and particularly of AT&T, which is the company that has proposed including Qwest in Phase II. AT&T’s years-long inattention to the access charge reform dockets in Arizona does not merit the granting of its latent wishes for immediate action on Qwest’s rates.

Despite that fact that it argued for bifurcation of the Access Charges Docket into two phases, AT&T voluntarily withdrew from the Qwest Phase, long before it was concluded. Notification of Intervention, Docket No. T-00000D-00-0672, November 10, 2004. Because AT&T quit the case, it should not be heard to complain that the Phase I access reductions were not adequate. Further, not only did AT&T decamp from the Phase I proceeding involving Qwest, but neither it nor any of the IXCs did anything to advance the Phase II proceeding involving the other LECs, until the docket was consolidated with the AUSF proceeding in 2007. The passage of time in this case does not mean that the cause is now urgent; rather it shows that the IXCs didn’t care enough to move it forward.

C. The Access Charges Investigation Should Now Focus on Independents and CLECs – As Originally Envisioned by the Procedural Bifurcation Established By the Commission
As established above, there is not a compelling reason to include Qwest in Phase II of the Access Charge Docket. On the other hand, there has been long-standing recognition that the access charge regime is ripe for reform with respect to the independents. As has been noted, the independents tend to rely on access charge revenues more, and overall their rates for intrastate and interstate switched access are higher than Qwest’s. Phase II should go on as planned, for the independents.

However, Qwest respectfully submits that the CLECs must also be included in Phase II. As noted above, the rates for many CLECs are also higher than Qwest’s. Qwest’s total minutes of use have steadily declined as competition takes more of Qwest’s market share. While some of the minutes are going to wireless or VoIP technologies, CLECs are handling an increased number of exchange access minutes in proportion to the total. As the parties have stated, the CLECs access charge rates are generally higher than Qwest’s, some significantly so. These higher access charges are implicit subsidies to those providers, permitting local services to be offered below cost, and putting competing providers like Qwest, who have lowered their access charges, in unfair competitive peril. The market should determine success between among competitors, not unbalanced rate regulation.

D. Data Requests

At the last Procedural Conference, AT&T pressed for data requests to be made that are designed to obtain carrier-specific details on access charges on incumbent carriers. For the reasons discussed above, obtaining access charge data from incumbent carriers will only obtain a fragment of the whole picture, and will not fulfill the objectives the Commission set out to achieve—a comprehensive investigation. To gain an understanding of what needs to occur in these dockets, there should be data requests that are designed to determine how the various wireline carriers in all categories compare with regard to minutes of use of originating and
terminating switched access (including 8XX origination minutes), and how they compare with regard to the amount of dollars charged. This information can provide data upon which informed decisions may be made about whether CLECs should be included in Phase II. Because of the competitive advantage that inures to CLECs with higher access charges, it is unlikely that they will ever join in a consensus view that they should be included in Phase II. Therefore, it is necessary that these data requests be sent now.

RESPECTFULLY SUBMITTED this 19th day of February, 2009.

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