

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
) WC Docket No. 04-313
Unbundled Access to Network Elements)

COMMENTS OF QWEST CORPORATION

Qwest Corporation (“Qwest”) hereby files this response to an undated letter (apparently filed electronically on February 17, 2006) by Arizona Dialtone, Inc. (“Arizona”). This undated letter requests that the Federal Communications Commission (“Commission”) grant Arizona “a 12 month waiver or extension of the March 11, 2006, effective date of the elimination of UNE [unbundled network element] mass market switching set out in the TRRO [Triennial Review Order on Remand].”¹

The Arizona letter is utterly without substance, and is at best confusing, if not incomprehensible in places. But for the fact that the letter names Qwest specifically, and because it could be read as a request for waiver/stay of the Commission’s *TRRO*,² Qwest would not respond to Arizona’s letter. If the Commission sees fit to request public comment on Arizona’s letter, Qwest will submit a more detailed response.

As far as we can determine from the Arizona letter, Arizona’s complaint is as follows. Arizona is a competitive local exchange carrier (“CLEC”) that provides loop and switching services to payphone providers. It initially did so by reselling Qwest’s public access lines

¹ Arizona Feb. 17, 2006 Letter, Section E.

² *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, 20 FCC Rcd 2533 (2005), *pet for rev.*, No. 05-1095 (D.C. Cir.) (“*TRRO*”), oral argument scheduled for Mar. 21, 2006.

(“PALs”). However, when Qwest, pursuant to the Commission’s *Wisconsin Order*,³ decreased its PAL rates, the resale margin was reduced concomitantly, thereby reducing Arizona’s profits. Arizona then moved to the unbundled network element platform (“UNE-P”) functionality offered by Qwest.

As of March 11, 2006, Arizona will no longer be able to purchase the UNE-P from Qwest. This is the result of the *TRRO* which found that the UNE-P could not be supported under the Act (and gave Qwest permission to eliminate the offering of unbundled switching at TELRIC rates). Since the adoption of the *TRRO*, Qwest has offered a market-based platform product called Qwest Platform Plus (“QPP”) to carriers. Thus, Arizona is able to purchase unbundled switching on a commercial basis as part of Qwest’s QPP offering, and is also able to purchase for resale the discounted Qwest PALs. Arizona also claims that switching might be available from as many as fifteen competitive switching providers.⁴

But Arizona claims that none of these options are sufficiently attractive, apparently because of the low price at which Qwest offers PAL service. Based on this assertion, Arizona requests that the discredited UNE-P be made available for an additional 12 months (*i.e.*, that the Qwest commercial QPP product be repriced solely for Arizona).

The Commission has, of course, expressly rejected the idea that competitors could obtain special or preferential treatment under the impairment analysis established in Section 251(d)(2)(B) of the Act.⁵ The fact that this is really the entirety of the relief that Arizona

³ *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, Memorandum Opinion and Order, 17 FCC Rcd 2051 (2002), *reh’g denied and reh’g en banc denied*, 2003 U.S. App. Lexis 19628, 19629 (D.C. Cir. Sept. 22, 2003), *cert denied sub nom. North Carolina Payphone Association v. FCC*, 541 U.S. 1009 (2004).

⁴ Arizona Feb. 17, 2006 Letter, Section A.

⁵ *TRRO*, 20 FCC Rcd at 2548 ¶ 26 and note 76. *Also see id.* at 2566 note 156.

requests by itself requires that the relief requested in the letter be denied. Qwest's QPP product is available in the market and a number of carriers have subscribed to it. Arizona believes that it needs a lower price than is available to it and is utilized by other competitors in order to compete. There is no legal basis for such a claim.

What is more, there is no factual basis for the claim. Other than a number of unsupported assertions that Qwest's PAL rates are unreasonably low, a claim that was not fully pursued with the Arizona Corporation Commission, Arizona offers no factual support for its request at all. In essence Arizona is seeking dramatic and anti-competitive action by the Commission -- essentially winding the clock back on competition to benefit a single competitor whose business plans are apparently not consistent with the realities of the marketplace (in a market where Arizona contends there are at least fifteen other competitors) without any serious factual support at all.

Lastly, even if the Commission treats Arizona's letter as a formal petition for waiver under Section 1.3 of its rules,⁶ Arizona provides no information that would justify granting a waiver of the *TRRO*. In order for the Commission to find that there is "good cause" to justify waiver of its general rules, the petitioner must first show that "special circumstances" justify a deviation from the general rules.⁷ Arizona has made no such showing in its letter nor can it. Arizona's claim simply appears to be that it will not make as much money providing service to payphone service providers as it did when it had the ability to purchase Qwest's UNE-P service. This hardly qualifies as "special circumstances" as is required under the Commission's waiver standard.

⁶ 47 C.F.R. § 1.3. Arizona does not even make an attempt to justify a stay of the March 11, 2006 deadline for eliminating the regulated UNE-P.

⁷ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) and *Northeast Cellular v. FCC*, 897 F.2d 1164, 1166-67 (D.C. Cir. 1990).

The Commission must summarily dismiss the Arizona letter and the relief requested therein.

Respectfully submitted,

QWEST CORPORATION

By: /s/Robert B. McKenna
Craig J. Brown
Robert B. McKenna
Suite 950
607 14th Street, N.W.
Washington, DC 20005
303.383.6650

Its Attorneys

February 27, 2006

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST CORPORATION** to be 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 04-313, 2) served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com, and 3) served via e-mail on the party listed below.

/s/ Richard Grozier
Richard Grozier

February 27, 2006

William D. Cleaveland
Morrill & Aronson, PLC
Suite 340
One East Camelback Road
Phoenix, AZ 85012-1648
wcleaveland@MAazlaw.com