



ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

1  
 2 MARC SPITZER  
 Chairman  
 3 WILLIAM MUNDELL  
 Commissioner  
 4 JEFF HATCH-MILLER  
 Commissioner  
 5 MIKE GLEASON  
 Commissioner  
 6 KRISTIN MAYES  
 Commissioner  
 7

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8 IN THE MATTER QWEST  
 CORPORATION'S COMPLIANCE WITH  
 9 SECTION 252(e) OF THE  
 TELECOMMUNICATIONS ACT OF 1996  
 10 IN THE MATTER OF U S WEST  
 COMMUNICATIONS, INC.'S COMPLIANCE  
 11 WITH SECTION 271 OF THE  
 COMMUNICATIONS ACT OF 1996  
 12

DOCKET NO. RT-00000F-02-0271

DOCKET NO. T-00000A-97-0238

13 ARIZONA CORPORATION COMMISSION,

DOCKET NO. T-01051B-02-0871

14 Complainant,

Arizona Corporation Commission

DOCKETED

15 v.

APR 19 2004

16 QWEST CORPORATION,

DOCKETED BY

17 Respondent.

18 NOTICE OF FILING PROPOSED AMENDMENTS

19  
 20 Qwest Corporation ("Qwest") hereby files three proposed amendments to the  
 21 Recommended Opinion and Order ("ROO") dated December 1, 2003.

22 Qwest believes that the preferable course at this point in the proceeding is for the  
 23 Commission to adopt a new Opinion and Order approving the Settlement Agreement filed  
 24 with the Commission on April 14, 2002 ("the Second Settlement Agreement"). The  
 25 Second Settlement Agreement resolves the issues in the Enforcement Dockets in their  
 26

1 entirety by requiring Qwest to pay significant fines to the State and reimburse the CLECs  
2 as well as incorporating non-monetary provisions that will prevent the behavior that gave  
3 rise to the Enforcement Dockets from recurring. The Commission should enter an  
4 Opinion and Order that approves the Agreement and that contains the other provisions,  
5 that the Commission believes are necessary to that approval and the termination of the  
6 Enforcement Dockets.

7 Alternatively, if the Commission chooses to use the ROO as the starting point for  
8 the entry of an Order resolving the Enforcement Dockets, the ROO will have to be  
9 amended to approve the Second Settlement Agreement and make necessary conforming  
10 changes. To facilitate that process, Qwest has prepared three proposed amendments that  
11 are filed herewith and proposed separately.

12 Qwest Proposed Amendment No. 1 amends the ROO to approve the Second  
13 Settlement Agreement and adopt that Agreement as the resolution of the Enforcement  
14 Dockets. It specifically provides that the CLECs will receive credits or payments that are  
15 consistent with the Second Settlement Agreement.

16 Qwest Proposed Amendment No. 2 amends the ROO to remove Findings of Fact  
17 and Conclusions of Law along with associated discussion in the text of the ROO that  
18 Qwest engaged in intentional or willful conduct in connection with the Unfiled  
19 Agreements Docket (Docket No. RT-00000F-02-0271). This Amendment is necessary to  
20 make the ROO consistent with the adoption of a settlement as the resolution of the  
21 Enforcement Dockets.

22 Qwest Proposed Amendment No. 3 is intended to conform the ROO with the  
23 events that have taken place since it was issued and with the approval of the Second  
24 Settlement Agreement. First, it recognizes the existence of both the First Settlement  
25 Agreement and the Second Settlement Agreement. Second, the amendment recognizes  
26 that the provisions of the ROO that implement the non-monetary penalties of the Second

1 Settlement Agreement are made pursuant to the terms of the Second Settlement  
2 Agreement. Third, the amendment removes certain ordering paragraphs involving further  
3 proceedings in the Enforcement Dockets or in separate proceedings that are unnecessary  
4 in light of the approval of the Second Settlement Agreement. Fourth, the Amendment  
5 corrects certain factual and typographical errors in the ROO.

6 The Proposed Amendments are drafted as amendments to the ROO, rather than the  
7 Amended Recommended Opinion and Order issued by the Administrative Law Judge. As  
8 a result, the Amendments recognize that, once the Second Settlement Agreement is  
9 approved, all of the Enforcement Dockets are terminated, including the 271 Sub-Docket  
10 (Docket No. T-00000A-97-0238). As a result of the approval of the Second Settlement  
11 Agreement, Qwest will withdraw its request for hearing in the 271 subdocket and no  
12 further proceedings in that matter will be necessary.

13 Qwest and the other parties to the Second Settlement Agreement believe that the  
14 Agreement should be approved. The best way to accomplish that is through a new  
15 opinion and order simply approving the agreement and adding any other necessary  
16 provisions. Alternatively, Qwest requests that the Commission adopt the three Proposed  
17 Amendments to the ROO attached hereto and thereby approve the Second Settlement  
18 Agreement.

19 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of April, 2004.

20 QWEST CORPORATION

21  
22 By: 

23 Timothy Berg  
24 Theresa Dwyer  
25 FENNEMORE CRAIG  
26 3003 North Central, Ste. 2600  
Phoenix, AZ 85012

- 1 ORIGINAL +17 copies filed this  
19<sup>th</sup> day of April, 2003:
- 2  
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ARIZONA CORPORATION COMMISSION  
1200 West Washington  
4 Phoenix, AZ
- 5 COPY delivered this day to:
- 6 Chris Kempley  
Maureen Scott  
7 Legal Division  
ARIZONA CORPORATION COMMISSION  
8 1200 West Washington  
Phoenix, AZ
- 9  
10 Lyn Farmer  
Jane Rodda  
Hearing Division  
11 ARIZONA CORPORATION COMMISSION  
1200 West Washington  
12 Phoenix, AZ
- 13 Ernest Johnson  
Utilities Division  
14 ARIZONA CORPORATION COMMISSION  
1200 West Washington  
15 Phoenix, AZ
- 16 COPY mailed this day to:
- 17 Michael M. Grant  
Todd C. Wiley  
18 GALLAGHER & KENNEDY  
2575 E. Camelback Road  
19 Phoenix, AZ 85016-9225
- 20 Curt Huttzell  
State Government Affairs  
21 ELECTRIC LIGHTWAVE, INC.  
4 Triad Center, Suite 200  
22 Salt Lake City, UT 84180
- 23 Brian Thomas  
TIME WARNER TELECOM, INC.  
24 520 SW 6th Avenue, Suite 300  
Portland, OR 97204
- 25  
26

- 1 Eric S. Heath  
SPRINT COMMUNICATIONS CO.  
2 100 Spear Street, Suite 930  
San Francisco, CA 94105
- 3  
4 Joan S. Burke  
OSBORN MALEDON, P.A.  
2929 N. Central Ave., 21st Floor  
5 PO Box 36379  
Phoenix, AZ 85067-6379
- 6  
7 Scott S. Wakefield  
RUCO  
1110 W. Washington, Suite 220  
8 Phoenix, AZ 85007
- 9 Rod Aguilar  
AT&T  
10 795 Folsom Street, #2104  
San Francisco, CA 94107-1243
- 11  
12 Daniel Waggoner  
Greg Kopta  
Mary Steele  
13 DAVIS, WRIGHT & TREMAINE  
2600 Century Square  
14 1501 Fourth Avenue  
Seattle, WA 98101
- 15  
16 Diane Bacon, Legislative Director  
COMMUNICATIONS WORKERS OF AMERICA  
5818 N. 7th St., Ste. 206  
17 Phoenix, AZ 85014-5811
- 18 Traci Grundon  
Mark P. Trincherro  
19 DAVIS, WRIGHT & TREMAINE  
1300 S.W. Fifth Avenue  
20 Portland, OR 97201
- 21 Mark DiNuzio  
COX COMMUNICATIONS  
22 20402 North 29th Avenue  
Phoenix, AZ 85027-3148
- 23  
24 David Conn  
Law Group  
MCLEODUSA INCORPORATED  
25 6400 C. Street SW  
PO Box 3177  
26 Cedar Rapids, IA 52406-3177

- 1  
2 Barbara Shever  
3 LEC Relations Mgr – Industry Policy  
4 Z-TEL COMMUNICATIONS, INC.  
5 601 S. Harbour Island, Ste. 220  
6 Tampa, FL 33602
- 7  
8 Jonathan E. Canis  
9 Michael B. Hazzard  
10 KELLY DRYE & WARREN LLP  
11 1200 19th St. N.W., 5th Floor  
12 Washington, DC 20036
- 13  
14 Jacqueline Manogian  
15 MOUNTAIN TELECOMMUNICATIONS  
16 1430 Broadway Rd., Suite A200  
17 Tempe, AZ 85282
- 18  
19 Frederick Joyce  
20 ALSTON & BIRD, LLP  
21 601 Pennsylvania Avenue NW  
22 Washington, DC 20004-2601
- 23  
24 Gary Appel, Esq.  
25 TESS Communications, Inc.  
26 1917 Market Street  
Denver, CO 80202
- 27  
28 Harry Pliskin, Senior Counsel  
29 Megan Doberneck  
30 COVAD COMMUNICATIONS COMPANY  
31 7901 Lowry Boulevard  
32 Denver, CO 80230
- 33  
34 Karen Clauson  
35 Dennis D. Ahlers  
36 Ray Smith  
37 ESCHELON TELECOM  
38 730 Second Avenue South, Ste. 1200  
39 Minneapolis, MN 55402
- 40  
41 Steven J. Duffy  
42 RIDGE & ISAACSON, P.C.  
43 3101 North Central Ave., Ste. 1090  
44 Phoenix, AZ 85012
- 45  
46 Rex Knowles  
47 XO  
48 111 E. Broadway, Suite 100  
49 Salt Lake City, Utah 84111
- 50

- 1 Deborah Harwood  
INTEGRA TELECOM OF ARIZONA, INC.  
2 19545 NW Von Newmann Drive, Suite 200  
Beaverton, OR 97006
- 3  
4 Bob McCoy  
WILLIAMS LOCAL NETWORK, INC.  
4100 One Williams Center  
5 Tulsa, OK 74172
- 6 Mark Dioguardi  
TIFFANY AND BOSCO, P.A.  
7 1850 North Central, Suite 500  
Phoenix, AZ 85004
- 8  
9 Richard M. Rindler  
Morton J. Posner  
SWIDER & BERLIN  
10 3000 K. Street NW, Ste. 300  
Washington, DC 20007
- 11  
12 Penny Bewick  
NEW EDGE NETWORKS, INC.  
PO Box 5159  
13 Vancouver, WA 98668
- 14 Dennis Doyle  
ARCH COMMUNICATIONS GROUP  
15 1800 West Park Drive, Suite 250  
Westborough, MA 01581-3912
- 16  
17 Gerry Morrison  
MAP MOBILE COMMUNICATIONS, INC.  
840 Greenbrier Circle  
18 Chesapeake, VA 23320
- 19 John E. Munger  
MUNGER CHADWICK  
20 National Bank Plaza  
333 North Wilmot, #300  
21 Tucson, AZ 85711
- 22 Thomas Campbell  
LEWIS & ROCA  
23 40 N. Central Avenue  
Phoenix, AZ 85004
- 24  
25 Andrew O. Isar  
TELECOMMUNICATIONS RESELLERS ASSOC.  
4312 92nd Avenue, NW  
26 Gig Harbor, WA 98335

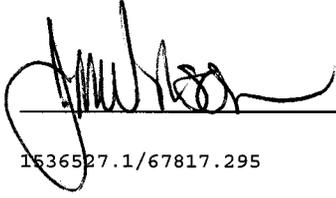
- 1 Raymond Heyman
- 2 Michael Patten
- 3 ROSHKA, HEYMAN & DEWULF
- 4 400 E. Van Buren, Ste. 900
- 5 Phoenix, AZ 85004-3906
- 6 Thomas F. Dixon
- 7 WORLDCOM, INC.
- 8 707 N. 17th Street #3900
- 9 Denver, CO 80202
- 10 Kevin Chapman
- 11 SBC TELECOM, INC.
- 12 1010 N. St. Mary's, Room 13K
- 13 San Antonio, TX 78215-2109
- 14 Richard S. Wolters
- 15 AT&T LAW DEPARTMENT
- 16 1875 Lawrence Street, #1575
- 17 Denver, CO 80202
- 18 Joyce Hundley
- 19 U.S. DEPARTMENT OF JUSTICE
- 20 Antitrust Division
- 21 1401 H Street N.W. #8000
- 22 Washington, DC 20530
- 23 Mark N. Rogers
- 24 EXCELL AGENT SERVICES, LLC
- 25 P.O. Box 52092
- 26 Phoenix, AZ 85072-2092
- 27 Jim Scheltema
- 28 BLUMENFELD & COHEN
- 29 1625 Massachusetts Ave. NW, Ste. 300
- 30 Washington, DC 20036
- 31 Kimberly M. Kirby
- 32 DAVIS DIXON KIRBY LLP
- 33 19200 Von Karman Avenue
- 34 Suite 600
- 35 Irvine, CA 82612
- 36 Al Sterman
- 37 ARIZONA CONSUMERS COUNCIL
- 38 2849 East 8th Street
- 39 Tucson, AZ 85716

- 1 Jeffrey W. Crockett  
Thomas L. Mumaw  
2 SNELL & WILMER  
One Arizona Center  
3 Phoenix, AZ 85004-0001
- 4 Teresa Tan  
WORLD.COM, INC.  
5 201 Spear Street, Floor 9  
San Francisco, CA 94105
- 6 Rodney Joyce  
7 SHOOK, HARDY & BACON, LLP  
Hamilton Square  
8 600 14th Street, NW, Ste. 800  
Washington, DC 20005-2004
- 9 Deborah R. Scott  
10 Associate General Counsel  
CITIZENS COMMUNICATIONS CO.  
11 2901 N. Central, Suite 1660  
Phoenix, AZ 85012
- 12 Richard P. Kolb, VP – Reg. Affairs  
13 ONE POINT COMMUNICATIONS  
Two Conway Park  
14 150 Field Drive, Suite 300  
Lake Forest, IL 60045
- 15 Letty Friesen  
16 AT&T LAW DEPARTMENT  
1875 Lawrence Street, #1575  
17 Denver, CO 80202
- 18 Paul Masters  
ERNEST COMMUNICATIONS INC.  
19 6475 Jimmy Carter Blvd., Ste. 300  
Norcross, GA 30071
- 20 Jon Poston  
21 ACTS  
6733 E. Dale Lane  
22 Cave Creek, AZ 85331
- 23 Lynda Nipps  
ALLEGIANCE TELECOM, INC.  
24 845 Camino Sure  
Palm Springs, CA 92262
- 25  
26

- 1 Gary L. Lane, Esq.  
2929 N. 44th Street, Suite 120  
Phoenix, AZ 85018-7239
- 3 Mike Allentoff  
GLOBAL CROSSING SERVICES, INC.  
4 1080 Pittsford Victor Road  
Pittsford, NY 14534
- 5 W. Hagood Bellinger  
6 4969 Village Terrace Drive  
Dunwoody, GA 30338
- 7 Philip A. Doherty  
8 545 S. Prospect Street, Ste. 22  
Burlington, VT 05401
- 9 David Kaufman  
10 E.SPIRE COMMUNICATIONS, INC.  
11 1129 Paseo de Peralta  
Santa Fe, NM 87501
- 12 Richard P. Kolb  
Vice President of Regulatory Affairs  
13 ONE POINT COMMUNICATIONS  
Two Conway Park  
14 150 Field Drive, Ste. 300  
Lake Forest, IL 60045
- 15 METROCALL, INC.  
16 6677 Richmond Highway  
Alexandria, VA 22306
- 17 Nigel Bates  
18 ELECTRIC LIGHTWAVE, INC.  
4400 NE 77th Avenue  
19 Vancouver, WA 98862
- 20 David Kaufman  
ESPIRE Communications  
21 1129 Paseo De Peralta  
Santa Fe. NM 87501
- 22 Mitchell F. Brecher  
23 Greenberg Traurig, LLP  
800 Connecticut Avenue, NW  
24 Washington, DC 20006
- 25
- 26

1 Martin A. Aronson, Esq.  
2 Morrill & Aronson, P.L.C.  
3 One East Camelback Road, Suite 340  
4 Phoenix, AZ 85012-1648

5 Patrick A. Clisham  
6 AT&T Arizona State Director  
7 320 E. Broadmoor Court  
8 Phoenix, AZ 85022

9   
10 \_\_\_\_\_

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12  
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**Qwest's Proposed Amendment No. 1  
to Recommended Opinion and Order of December 1, 2003.**

**Page 44, line 13**

Insert after "McLeod,"

"we were prepared to order that"

**Page 44, line 14**

Delete "September"

Insert "June"

**Page 44, line 16**

Delete "October 1, 2000"

Insert "January 1, 2001"

Delete "September"

Insert "June"

**Page 44, line 17**

Delete "are"

Insert "were"

**Page 44, line 20**

Insert after "however"

"in considering the First Settlement Agreement."

**Page 44, line 21**

Delete "believe equity warrants"

Insert "believed equity warranted"

**Page 44, line 24**

Delete "October 2, 2000"

Insert "January 1, 2001"

**Page 44, line 25**

Delete "September 19"

Insert "June 30 "

Delete "23"

Insert "18"

Delete "(Kalleberg Direct Ex, St-2, p. 37)"

Insert after "we"

"were prepared to"

**Page 44, line 26**

Delete "herein are"

Insert "were"

**Page 44, line 27**

Insert

"Because the Revised Settlement Agreement increases the total amount of credits to the CLECs to \$11,700,000, because Confidential Attachment A provides the CLECs with the opportunity to evaluate for themselves whether the amounts listed therein are adequate recompense, and because the CLECs will be able to obtain these results within sixty days of the effective date of this Order, we approve the Revised Settlement Agreement and its terms and find that using Confidential Attachment A to the Revised Settlement Agreement as the basis for setting the amounts due to each CLEC is in the public interest. Consistent with the Revised

Settlement Agreement, an Eligible CLEC shall be required to execute a Release, in the form of Attachment B, of any and all intrastate claims of the CLEC and its affiliates, parents and subsidiaries against Qwest, arising out of any of the agreements, acts and omissions at issue in the 252(e) Unfiled Agreements Docket (Docket No, RT-00000F-02-0271), the 271 Subdocket (Docket No. T-00000A-97-0238) and the Order to Show Cause Docket (Docket No. T-01051B-02-0871).”

**Page 44, line 28**

Insert after “argument”

“regarding the First Settlement Agreement”

**Page 45, line 8**

Delete “The Discount Credits”

Insert “The Credits under the Revised Settlement Agreement”

**Page 45 line 9**

Delete “Discount”

**Page 56, line 4**

Delete “September 30

Insert “June 30”

**Page 56, line 5-7**

Delete

“totaling 10 percent of its purchases of Section 251(b) and (c) services and all intrastate services from Qwest Communications Corporation or Qwest Corporation, and their affiliates, in Arizona from October 1, 2000 to September 30, 2002.”

Insert “

equaling the amounts listed on Confidential Attachment A within sixty days of the effective date of this Order.”

**Page 56, line 9**

Insert at the end of the Line

“To obtain the credit or cash payment, an Eligible CLEC shall be required to execute a Release in the form of Attachment B, of any and all intrastate claims of the CLEC and its affiliates, subsidiaries and parents against Qwest, arising out of any of the agreements, acts and omissions at issue in the 252(e) Unfiled Agreements Docket (Docket No. RT-00000F-02-0271), the 271 Subdocket (Docket No. T-00000A-97-0238) and the Order to Show Cause Docket (Docket No. T-01051B-02-0871).

1536382

**Qwest's Proposed Amendment No 2 to the  
December 1, 2003 Recommended Opinion and Order**

**Page 38, line 7**

Delete "intentionally and willfully"

**Page 38, lines 13 through 15**

Delete "The evidence shows that the agreements with Eschelon for consulting services, and with McLeod for purchases which Qwest claims were not subject to Section 252 requirements, were shams designed to hide the true nature of the agreements."

**Page 38, line 19-20**

Delete "calculated attempts to provide favorable" and insert "provided different"

**Page 38, lines 21 through 25**

Delete all text prior to "The public version" on line 25.

**Page 38, line 28 through Page 39, line 1**

Delete "Likewise, the consulting agreement with Eschelon was a sham arrangement designed to hide the true purpose of the discount."

**Page 39, lines 6 through 7**

Delete "Furthermore, there is no evidence of documents supporting the assertion that Eschelon provided consulting services under the Agreement."

**Page 41, line 18**

Delete "intentional willful"

**Page 41, lines 20 through 21**

Delete "demonstrates Qwest's contempt of" and insert "was not consistent with"

**Page 41, lines 22 through 23**

Delete “shows also shows contempt on Qwest’s part” and insert “was not consistent with the Commission’s processes”

**Page 41, fn 10**

Delete “deliberate” in the third line of the footnote.

**Page 42, line 2**

Delete “intentional and willful”

**Page 42, line 9**

Delete “ rather than a willful attempt to avoid the filing requirements”

**Page 48, line 25**

Delete “intent to interfere with” and insert “interference”

**Page 51, line 5**

Delete “more favorable”

**Page 51, line 7**

Delete Finding of Fact No. 37.

**Page 51, line 9**

Delete “intentionally”

**Page 51, line 11**

Delete “favorable”

**Page 51, line 12**

Delete “willfully and intentionally.”

**Page 52, line 12**

Delete “undermined” and insert “acted inconsistently with “

**Page 52, line 16**

Delete Finding of Fact No. 45.

Renumber subsequent Findings

**Page 53, line 25**

Delete Finding of Fact No. 53.

Renumber subsequent Findings

**Page 54, lines 14 through 15**

Delete "Willful and intentional"

**Page 55, line 10**

Delete "intentional and willful"

1536381

**Qwest's Proposed Amendment No. 3 to  
December 1, 2003 Recommended Opinion and Order**

**Page 2, Line 21**

Insert after "June 13, 2003" "Qwest does not request any further hearings before the Commission in the Section 271 Sub-docket regarding whether Qwest interfered with the Section 271 regulatory process."

**Page 2, Line 25**

Insert at end of line: "On April 14, 2004, Qwest, AT&T, Time Warner and Arizona Dialtone filed a second Revised Settlement Agreement, which would, if adopted, resolve the allegations raised in the three dockets. The Commission convened a hearing on the first Settlement Agreement commencing on September 16, 2003. On December 1, 2003, the Administrative Law Judge issues a Recommended Opinion and Order, which was followed by an Amended Recommended Opinion and Order. The Commission convened an open meeting on April 15, 2004 to hear oral argument on the Recommended Opinions and Orders as well as the Revised Settlement Agreement filed on April 14, 2004."

**Page 6, Lines 18-19**

Delete "from October 2000 through September 2001."

**Page 7, Line 11**

Delete Escehlon, insert "Eschelon"

**Page 10, Line 12**

Delete "2003" and Insert "2002"

**Page 16, Line 19**

Insert "First" before "Settlement Agreement"

**Page 16, Line 23**

Insert "First" before "Proposed Settlement" and "Settlement Agreement"

**Page 17, Line 3**

Insert "First" before "Settlement Agreement"

**Page 17, Line 4**

Insert "First" before "Settlement Agreement"

**Page 21, Line 1**

Insert "First" before "Settlement Agreement"

**Page 21, Line 2**

Insert "First" before "Settlement Agreement"

**Page 21, Line 5**

Insert "First" before "Settlement Agreement"

**Page 21, Line 8**

Insert "First" before "Settlement" insert "Agreement" after

**Page 21, Line 9**

Insert "First" before "Settlement" insert "Agreement" after

**Page 21, Line 14**

Insert "First" before "Settlement" insert "Agreement" after

**Page 21, Line 21**

Insert "First Settlement" before "Agreement"

**Page 21, Line 25**

Insert "First Settlement" before "Agreement"

**Page 22, Line 2**

Insert "First" before "Settlement Agreement"

**Page 22, Line 8**

Insert "First" before "Settlement Agreement"

**Page 22, Line 17**

Insert "First" before "Settlement" insert "Agreement" after

**Page 22, Line 17**

Insert "First Settlement" before "Agreement"

**Page 22, Line 19**

Insert "First" before "Settlement" insert "Agreement" after

**Page 22, Line 23**

Insert "First" before "Settlement" insert "Agreement" after

**Page 23, Line 13**

Insert "First" before "Settlement" insert "Agreement" after

**Page 23, Line 14**

Insert "First" before "Settlement"

**Page 23, Line 18**

Insert "First" before "Settlement"

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**Page 23, Line 23**

Insert "First" before "Settlement" insert "Agreement" after

**Page 23, Line 25**

Insert "First" before "Settlement" insert "Agreement" after

**Page 24, Line 3**

Insert "First" before "Settlement Agreement"

**Page 24, Line 15**

Insert "First" before "Settlement" and "Agreement" after

**Page 24, Line 21**

Insert "First" before "Settlement" and "Agreement" after

**Page 25, Line 13**

Insert "First" before "Settlement Agreement"

**Page 25, Line 17**

Insert "First" after "...contemplated under the"

**Page 25, Line 18**

Insert "Agreement" after "Settlement"

**Page 25, Line 25**

Insert "First" before "Settlement Agreement"

**Page 26, Line 4**

Insert "First" before "Settlement" and "Agreement" after and insert "First" before the second "Settlement"

**Page 27, Line 6**

Insert "First" before "Settlement" and "Agreement" after

**Page 27, Line 25**

Insert "First" before "Settlement Agreement"

**Page 27, Line 27**

Insert "First" before "Settlement" and "Agreement" after

**Page 27, Line 28**

Insert "First" before "Settlement" and "Agreement" after

**Page 28, Line 6**

Insert "First" before "Settlement"

**Page 28, Line 11**

Delete "the" and insert "the First" before Settlement Agreement

**Page 28, Line 16**

Insert "First" before "Settlement" and "Agreement" after

**Page 28, Line 18**

Insert "First" before "Settlement" and "Agreement" after

**Page 29, Line 20**

Insert "First" before "Settlement" and "Agreement" after

**Page 30, Line 9**

Insert "First" before "Settlement Agreement"

**Page 32, Line 2**

Insert "in the First Settlement Agreement" after "AT&T argues that the credits"

**Page 33, Line 1**

Insert "First" before "Settlement" and "Agreement" after

**Page 33, Line 5**

Insert "First" before "Settlement" and "Agreement" after

**Page 33, Line 6**

Insert "First Settlement" before "Agreement"

**Page 33, Line 15**

Insert "In the proceedings regarding the First Settlement Agreement," to the beginning of the sentence

**Page 34, Line 2**

Insert "First" before "Settlement" and "Agreement" after

**Page 34, Line 15**

Insert "First" before "Settlement Agreement"

**Page 34, Line 17**

Insert "First" before "Settlement" and "Agreement" after

**Page 34, Line 25**

Insert "regarding the First Settlement Agreement" before "as being overly broad"

**Page 34, Line 26**

Insert "for the First Settlement Agreement" after "Claims"

**Page 35, Line 10**

Insert "First" before "Settlement" and "Agreement" after

**Page 35, Line 11**

Insert "First" before "Settlement" and "Agreement" after

**Page 35, Line 14**

Insert "First Settlement" before "Agreement" after

**Page 35, Line 15**

Insert "in the First Settlement Agreement" after "revised release"

**Page 36, Line 4**

Insert

The Revised Settlement Agreement

On April 14, 2004, Qwest filed a Revised Settlement Agreement to which AT&T, ADI, and Time Warner are signatories. Staff and RUCO are not signatories to the Revised Settlement Agreement.

The substantive terms of the Revised Settlement Agreement are the same with two major exceptions: First, the Voluntary Contributions have been eliminated, and the fines have been increased by an approximately commensurate amount, to a total fine of \$11,000,000. Second, the CLEC credits are increased to a total amount of \$11,700,000, with the monies to be distributed to CLECs within 60 days of the approval of the Revised Settlement Agreement by the Commission. The distribution is pursuant to the amounts listed on a confidential Attachment A that has been provided to the Staff, RUCO, and the Commission pursuant to a sealing order. Each CLEC listed on Attachment A has the opportunity to review the amounts listed on Attachment A and determine whether the amount listed thereon is adequate recompense to it. If a CLEC decides to participate in the Revised Settlement Agreement, it must execute a release of all claims. If a CLEC declines to participate in the Revised Settlement Agreement, it may pursue any available remedies.

Qwest, AT&T, ADI, and Time Warner each recommend that the Commission approve the Revised Settlement Agreement. They believe that the Revised Settlement Agreement resolves the primary issues raised by the parties during the hearing on the First Settlement Agreement and in the ALJ's Recommended Opinion and Order dated December 1, 2003. Qwest, AT&T, ADL and Time Warner also assert that the Revised Settlement Agreement is fair, in the public interest, and avoids the considerable litigation risk and delay attendant to the Commission's ordering Qwest to pay monetary and nonmonetary penalties.

Staff does not support the Revised Settlement Agreement. Staff believes that the Revised Settlement Agreement does not address dismissal of the second cost docket appeal. MTI also does not support the Revised Settlement Agreement because it does not address the dismissal of the second cost docket appeal.

RUCO does not support the Revised Settlement Agreement because RUCO believes that a finding of wrongdoing is necessary to provide an adequate deterrent to Qwest against repeating the conduct.

**Page 36, Line 18**

Insert "First Settlement" before "Agreement"

**Page 36, Line 20**

Insert "First" before "Settlement" and "Agreement" after

**Page 36, Line 20**

Insert "First Settlement" before "Agreement"

**Page 37, Line 13**

Insert "First" before "Settlement Agreement" in heading

**Page 37, Line 14**

Insert "First" before "Settlement Agreement"

**Page 37, Line 16**

Insert "First" before "Settlement" and "Agreement" after

**Page 40, Line 6**

Insert "First" before "Settlement Agreement"

**Page 40, Line 7**

Delete "Our" and insert "One of our" and change "concern is" to "concerns are"

**Page 40, Line 8**

Insert "Agreement" before ", are not good public policy"

**Page 40, line 8**

Insert "First" before "Settlement"

**Page 40, Line 10**

Insert "First" before "Settlement" and "Agreement" after

**Page 40, Line 11**

Delete "Settlement's" and insert "First Settlement Agreement's"

**Page 40, Line 16**

Insert "First" before "Settlement Agreement"

**Page 40, Lines 21 – 22**

Delete "Moreover, it appears disingenuous to claims that the Voluntary contributions are not re-directed penalties."

**Page 40, Line 23**

Insert "First" before "Settlement" and "Agreement" after

**Page 41, Line 19**

Insert "First" before "Settlement Agreement"

**Page 41, Line 19**

Insert "as set forth in the Revised Settlement Agreement." after "process is appropriate"

**Page 45, Line 24**

Delete FN 13.

**Page 46, Line 2**

Insert "First" before "Settlement Agreement"

**Page 46, Line 3**

Insert "First" before "Settlement Agreement"

**Page 46, Line 4**

Change "September" to "June"

**Page 46, Lines 5-8**

Delete:

Pursuant to our November 7, 2002 Procedural Order, issues related to ADI's ability to opt into the Global Crossing agreement is an issue that is more appropriately addressed in Phase B of the Section 252(e) proceeding.

And insert:

Because ADI supported the Second Settlement Agreement and indicated that the Credits it would receive under Attachment A to that Agreement was sufficient to compensate it for its claims in all three of these dockets, we need not determine the issues raised by ADI with respect to the First Settlement Agreement.

**Page 49, Line 10**

Insert "First" before "Settlement Agreement"

**Page 49, Line 11**

Insert "First" before "Settlement Agreement"

**Page 49, Line 13**

Insert "First" before "Settlement Agreement"

**Page 49, Line 17**

Insert "First" before "Settlement Agreement"

**Page 49, Line 21**

Insert "First" before "Settlement Agreement"

**Page 49, Line 22**

Insert "First" before "Settlement Agreement"

**Page 49, Line 25**

Insert Paragraph 25:

25. On December 1, 2003, the Hearing Division issued a Recommended Opinion and Order recommending that the First Settlement Agreement be rejected by the Commission.

Insert Paragraph 26:

Paragraph 26:

26. On April 14, 2004, Qwest, AT&T, ADI and Time Warner jointly filed a second Revised Settlement Agreement. The Revised Settlement Agreement purports to resolve all the issues raised in the three above-captioned enforcement dockets involving Qwest. A copy of the Revised Settlement Agreement is attached as Exhibit C, and incorporated herein by reference.

''

**Page 50, Line 27**

Insert after "Exhibit B" the following "with the exception of the filings on May 21, 2003, which included 2 of the 28 agreements listed on Exhibit B."

**Page 53, Line 2**

Insert after "a." the following "Pursuant to the Terms of the Revised Settlement Agreement"

**Page 53, Line 5**

Insert after "b." the following "Pursuant to the Terms of the Revised Settlement Agreement."

**Page 53, Line 7**

Insert after “c.” the following “Pursuant to the Terms of the Revised Settlement Agreement.”

**Page 53, Line 10**

Insert after “d” the following “Pursuant to the Terms of the Revised Settlement Agreement.”

**Page 53, Line 14**

Insert after “e” the following “Pursuant to the Terms of the Revised Settlement Agreement.”

**Page 53, Line 15**

Insert after “f” the following “Pursuant to the Terms of the Revised Settlement Agreement

**Page 53, Line 17**

Insert after “g” the following “Pursuant to the Terms of the Revised Settlement Agreement

**Page 53, Line 19**

Insert after “h” the following “Pursuant to the Terms of the Revised Settlement Agreement

**Page 54, Line 6**

Delete “the Settlement Agreement ” and insert “the First and Revised Settlement Agreements”

**Page 54, Line 7**

Delete “Exhibit A’ and Insert “Exhibits A and C”

**Page 54, Line 25**

Insert “First” before “Settlement”

**Page 54, Line 27**

Insert

“9. In light of the complete record in these matter, the Revised Settlement Agreement is a fair and reasonable resolution of the issues raised and is in the public interest.”

**Page 55, Line 3**

Insert "First" before "Settlement"

**Page 55, Line 5**

Insert new Ordering Paragraph: "IT IS FURTHER ORDERED that approval of the Revised Settlement Agreement between Qwest, AT&T, ADI and Time Warner attached hereto as Exhibit C is granted."

**Page 56, Line 10**

Insert between "that" and Qwest" the following: 'pursuant to the terms of the Revised Settlement Agreement'

**Page 56, Line 13**

Insert between "that" and Qwest" the following: 'pursuant to the terms of the Revised Settlement Agreement'

**Page 56, Line 17**

Insert between "that" and Qwest" the following: 'pursuant to the terms of the Revised Settlement Agreement'

**Page 56, Line 21**

Insert between "that" and Qwest" the following: 'pursuant to the terms of the Revised Settlement Agreement'

**Page 56, Line 23**

Insert between "that" and Qwest" the following: 'pursuant to the terms of the Revised Settlement Agreement'

**Page 56, Line 25**

Insert between "that" and Qwest" the following: 'pursuant to the terms of the Revised Settlement Agreement'

**Page 56, Line 27**

Insert between "that" and Qwest" the following: 'pursuant to the terms of the Revised Settlement Agreement'

**Page 57, Lines 8-14**

Insert:

IT IS FURTHER ORDERED pursuant to the terms of the Revised Settlement Agreement that Qwest further will dismiss with prejudice its appeal of the Commission's Opinion and Order issued on June 12, 2002, Decision No. 64922, in Investigation Into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts, Phase II, ACC Docket No. T-00000A-00-0194 that it filed in the United States District Court for the District of Arizona (Case No. CIV 02-1626 (PHX-SRB), captioned Qwest Corporation v. Arizona Corporation Commission, et al. ("the First Appeal") within 30 days of the Effective Date of the Commission's Decision approving the Settlement Agreement.

**Page 57, Lines 2-5**

Delete all text.

1536380