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**BEFORE THE ARIZONA CORPORATION COMMISSION**

2004 APR 19 P 4: 50

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| | |
|---|---|
| IN THE MATTER QWEST CORPORATION'S COMPLIANCE WITH SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996 | DOCKET NO. RT-00000F-02-0271 |
| IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE COMMUNICATIONS ACT OF 1996 | DOCKET NO. T-00000A-97-0238 |
| ARIZONA CORPORATION COMMISSION, Complainant, v. QWEST CORPORATION, Respondent. | DOCKET NO. T-01051B-02-0871 |

Arizona Corporation Commission
DOCKETED

APR 1 9 2004

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**NOTICE OF FILING PROPOSED AMENDMENTS**

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

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

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

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

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

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

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

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

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

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

RESPECTFULLY SUBMITTED this 15th day of April, 2004.

QWEST CORPORATION

By: _____

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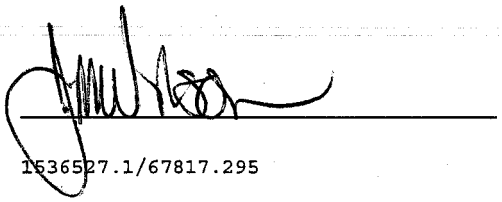

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**Qwest's Proposed Amendment No. 1**
**to Recommended Opinion and Order of December 1, 2003.**

**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 21thorugh 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"

**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
<u>The Revised Settlement Agreement</u>

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.

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