

**THIS AMENDMENT:**

Passed  Passed as amended by \_\_\_\_\_  
 Failed  Not Offered  Withdrawn



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**GLEASON PROPOSED AMENDMENT # 5**

2004 APR 20 P 4: 40

TIME/DATE PREPARED: 3:00 p.m. / April 20, 2004 **AZ CORP COMMISSION DOCUMENT CONTROL**

COMPANY: Qwest Corporation

DOCKET NO. T-00000A-97-0238, RT-00000F-02-0271 and T-01051B-02-0871

SPECIAL OPEN MEETING DATE: April 21, 2004

**Reference December 1, 2003 Recommended Opinion and Order**

Page 37, DELETE lines 22-28.

Arizona Corporation Commission

**DOCKETED**

DELETE page 38.

APR 20 2004

Page 39, DELETE lines 1-14. INSERT:

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“Section 252(a)(1) reads “The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement.” Section 252(e)(1) states “Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.” Qwest has read these provisions very narrowly. Qwest contends that it did not violate the filing requirements because the federal Act does not require contracts for an ILEC to purchase services from a CLEC to be filed. In essence, the physical separateness of the two documents eliminates the filing requirement of the agreement obligating Qwest to purchase goods or services from the CLEC.

On April 23, 2002, Qwest filed a petition with the FCC seeking a declaratory ruling on what types of agreements between ILECs and CLECs are subject to section 252 filing requirements. (*Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)* Docket No. 02-89.) On October 4, 2002, the FCC rejected Qwest’s interpretation of section 252 and held that carriers must file with state commissions for review and approval any “agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights of way, reciprocal compensation, interconnection, unbundled network elements, or collocation...” (*Qwest Declaratory Ruling*, 17 FCC Rcd at 19340-41.) Seven months later, Qwest filed 12 agreements with this Commission which were approved by operation of law.

The federal Act does not prohibit volume commitments to be considered when negotiating the prices of an interconnection agreement. No other Arizona CLEC had the ability to meet the volumes of McLeod or Eschelon. After Qwest filed these agreements, no CLEC opted to accept the same rates, terms and conditions. The record does not provide any evidence of actual financial damage to CLECs. "

Page 41, DELETE lines 15-22.

Page 42, DELETE lines 1-6. INSERT:

"Qwest misinterpreted its section 252 obligations. Qwest requested the FCC to issue a Declaratory Ruling to provide guidance as to which agreements must be filed with state commissions. Although a very narrow reading of the federal Act supports Qwest's position, the FCC has unambiguously provided a broader view in an effort to foster competition in the telecommunications market. To correct Qwest's misinterpretation, we order Qwest to provide credits to CLECs that mirror the benefits received by CLECs that participated in the unfiled agreements. These credits give all CLECs the same deal that some CLECs received. The credits provide an adequate remedy for Qwest's limited interpretations of its statutory filing obligations. Therefore, no penalty pursuant to §40-424 or §40-425 is assessed."

Page 51, DELETE Findings of Fact 37 – 39. INSERT new Finding of Fact 37:

"Qwest's narrow reading of section 252 was rejected by the FCC."

Page 53, DELETE Conclusion of Law 5.

Page 54, DELETE the third and fourth ordering paragraphs.