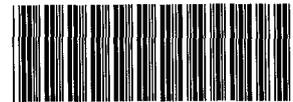


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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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IN THE MATTER OF QWEST
CORPORATION'S FILING AMENDED
RENEWED PRICE REGULATION PLAN.

DOCKET NO. T-01051B-03-0454

IN THE MATTER OF THE
INVESTIGATION OF THE COST OF
TELECOMMUNICATIONS ACCESS.

DOCKET NO. T-00000D-00-0672

**OMNIBUS REPLY IN SUPPORT OF
QWEST'S MOTION TO REVISE
PRODUCTIVITY FACTOR**

Qwest Corporation ("Qwest") offers the following reply to comments filed by the Residential Utility Consumer Office ("RUCO"), AT&T, and Commission Staff in response to Qwest's March 5, 2004 Motion to Revise Productivity Factor ("Qwest's Motion").

I. INTRODUCTION.

As a preliminary matter, Qwest reiterates its position that the Commission was incorrect in interpreting the Settlement Agreement and Price Cap Plan to require an additional productivity adjustment that falls outside the effective dates of the initial term. However, since the Commission has ordered further adjustments, Qwest believes that the language of the Plan dictates that the adjustment be based on updated information. This interpretation has the added benefit of mitigating the likely public policy consequences of implementing an interim rate reduction that may be followed by a rate increase and/or

1 surcharge. *See* Commissioner Gleason's Dissent to Decision No. 66772 at 2. Staff,
2 RUCO and AT&T do not controvert these basic reasons for revising the productivity
3 factor applied to any interim rate adjustment, and many of the issues they raise are simply
4 without merit.

5 **II. ARGUMENT.**

6 The comments filed in response to Qwest's Motion fall into three general
7 categories. First, all three responding parties note that the productivity factor will most
8 likely be an issue in future proceedings if a new price cap plan is adopted. Staff's
9 Response at 1-2; RUCO's Response at 3; AT&T's Response at 2 & 9. RUCO and AT&T
10 also raise specific productivity issues that they believe should be addressed in the new
11 price cap plan. RUCO's Response at 6-8; AT&T's Response at 2-9. These responses are
12 irrelevant to Qwest's Motion. Qwest agrees with all responding parties that the
13 productivity factor will be an issue in establishing a new price cap plan, if another such
14 plan is considered. However, Qwest is only attempting to establish a productivity factor
15 for the interim period immediately following the expiration of the initial term of the
16 current Plan, not for the term of a new price cap plan.

17 Second, Staff and RUCO suggest that Qwest's Motion would defeat the
18 Commission's purpose in Decisions No. 63487 and 66772. Staff's Response at 3;
19 RUCO's Response at 3-6. To the contrary, the Commission clearly stated in Decision
20 66772 that the productivity adjustment in April 2004 is to be made "pursuant to the terms
21 of the Plan." Decision No. 66772 at 5. The Plan itself provides for updated productivity
22 information in the last year of the initial term. Price Cap Plan, ¶ 2(b)(v). Qwest is simply
23 suggesting that if the Plan is interpreted to require another adjustment after the initial
24 term of the Plan expires, then the updated information should be used for its obvious
25 purpose.

26 Finally, Staff and RUCO argue that the productivity adjustments were part of

1 Qwest's rate structure during the initial term of the Plan, and therefore Arizona law
2 requires continued uniform reductions until a new rate structure is in place. Staff's
3 Response at 2-3; RUCO's Response at 2-3. These arguments are based on an inaccurate
4 interpretation of the Plan itself, and on interpretations of Arizona law that cannot
5 withstand scrutiny.

6 **A. Qwest's proposed revision applies only to the interim rate adjustment**
7 **effective between April 1, 2004 and the beginning date of a new price**
8 **cap plan or other rate structure.**

9 All three responding parties argue that if any subsequent plan is to include a
10 productivity adjustment, the methodology and the ultimate size of the adjustment will be
11 an issue in the proceedings. Staff's Response at 1-2; RUCO's Response at 3; AT&T's
12 Response at 2 & 9. Qwest generally agrees with this point. However, the limited
13 purpose of Qwest's motion is to address the interim productivity adjustment ordered by
14 the Commission in Decision No. 66772. Qwest does not anticipate that the amount of the
15 interim adjustment will have any effect on the calculation of productivity in a subsequent
16 price cap plan. Moreover, this adjustment is being made under significant time
17 constraints that are inherent in the April 1 deadline established by Decision No. 66772. If
18 this adjustment is not addressed until Qwest's case in chief, then any downward revision
19 of the productivity factor will necessarily require a surcharge to Qwest's customers.
20 Qwest believes that a surcharge is not in the interest of the public or of any party.

21 AT&T and RUCO also offer a preview of some of the issues they intend to raise in
22 proceedings for a new price cap plan. RUCO's Response at 6-8; AT&T's Response at
23 2-9. In fact, AT&T's response is primarily concerned with criticizing the method used to
24 obtain the productivity adjustment during the initial three-year term of the Plan. For
25 example, AT&T suggests that Qwest's productivity data show excessive volatility,
26 (AT&T's Response at 3) that a productivity analysis should include broader information

1 on Qwest's affiliates, (*id.* at 5-8), and that examining changes in revenue from services in
2 different baskets might produce a different productivity number. *Id.* at 9.

3 Qwest will not respond at length to these arguments because they are again
4 irrelevant for purposes of the present motion.¹ However, a few of AT&T's assertions
5 require clarification. AT&T argues, "[T]here is no *a priori* reason to expect such extreme
6 volatility" in productivity growth rates except for an "extraordinary event." AT&T's
7 Response at 3. The following table shows the annual productivity rates over the 14 years
8 of productivity growth rate data provided in Attachments B and C to the affidavit of
9 Philip E. Grate.

Year	Source	Productivity Growth Rate	Absolute Change from Prior Year (Basis Points)
1989	Att. C	-2.5%	
1990	Att. C	1.7%	420
1991	Att. C	-6.4%	810
1992	Att. C	-2.8%	360
1993	Att. C	0.5%	330
1994	Att. C	2.7%	220
1995	Att. C	4.4%	170
1996	Att. C	4.5%	10
1997	Att. C	4.3%	20
1998	Att. C	1.6%	270
1999	Att. B	5.1%	350
2000	Att. B	-7.2%	1230
2001	Att. B	3.3%	1050
2002	Att. B	-5.8%	910
14 year average		0.2%	

21 The data shows that significant changes in the absolute value of the productivity data
22 have been the norm, not the exception over this period. The data further demonstrates
23

24 ¹ In fact, most of AT&T's arguments suggest that the methodology used to establish the current
25 productivity adjustment was flawed. This supports Qwest's contention that it was ill advised for
26 the Commission to order another productivity adjustment based on an outdated and admittedly
experimental productivity analysis that was only intended to apply for the first three years of the
Plan.

1 that while yearly productivity growth has varied from a high of positive 5.1% to a low of
2 negative 7.2% over the past 14 years, the average growth in productivity has been 0.2%.
3 This suggests that the 3.7% productivity growth factor found in Qwest's 1999 rate case
4 was too high.

5 It should also be noted that Qwest did not propose the method for calculating the
6 productivity adjustment during the initial term of the Plan. Qwest provided ten years of
7 data, from which Staff selected the most recent four years. *See* Affidavit of Philip E.
8 Grate at 1-2. Qwest agreed to the resulting figure as a compromise, not because Qwest
9 believed the methodology was ideal. However, all parties apparently agree that Decision
10 No. 66772 purports to be based on the terms of the original Price Cap Plan. If any
11 productivity adjustment can be made after the Plan's initial term has expired, such an
12 adjustment must be based on the same methodology used in the initial term.
13 Accordingly, Qwest's proposed revision is based on precisely the same algorithm applied
14 over the most recent four years, just as in the initial term. Affidavit of Philip E. Grate at
15 2.

16 In a similar vein, RUCO argues at some length (and without citation to authority)
17 that rates should be set based on industry-wide productivity rather than on Qwest's
18 "carrier-specific" data. RUCO's Response at 6-8. Again, this argument is irrelevant to
19 Qwest's Motion. All of AT&T's and RUCO's arguments can be raised in the context of
20 a new price cap plan, but under the existing Plan (which all the responding parties insist
21 is still in effect) and the express terms of Decision No. 66772, any adjustment in April
22 2004 must be made using the established methodology. If there is a need for additional
23 evidence at this time, a highly expedited procedural schedule would seem to be in order,
24 given the April 1 time frame established by Decision No. 66772.

1 **2. Assuming the Commission had authority to order another productivity**
2 **adjustment on April 1, 2004, Qwest's proposed revision is consistent**
3 **with Decision Nos. 63487 and 66772.**

4 Staff and RUCO argue that Qwest's Motion would defeat the Commission's intent
5 in Decision Nos. 63487 and 66772.² To the extent the Commission had both the intent
6 and the lawful authority to require productivity adjustments after the expiration of the
7 initial term of the Price Cap Plan, Decision No. 63487 itself strongly suggest that
8 adjustments should be based on updated information. For example, the Commission
9 expressly noted that the Price Cap Plan was "for only three years" and at the end of three
10 years "can be adjusted. At that time the expected benefits from the merger will be
11 measurable." Decision No. 63487 at 10-11. Obviously, "expected benefits" would be
12 "measurable" only if new data were taken into consideration. Nowhere in Decision No.
13 63487 did the Commission express an intention to lock in a 4.2% annual reduction after
14 the initial term of the Plan expired.

15 Moreover, Decision No. 66772 explicitly found that "pursuant to the terms of the
16 Plan, the Annual Price Index adjustment for the third year of the Plan from April, 2003 to
17 April 2004, is required to be made on April 1, 2004." Decision No. 66772 at 5-6. Again,
18 Qwest maintains that the Price Cap Plan was not intended to require further rate
19 reductions after it expired on March 30, 2004. However, assuming for the purposes of
20 Qwest's Motion that the Commission's interpretation is correct, Paragraph 2(b)(v) of the
21 Plan specifically provides that "[i]n the first quarter of the third year of the Price Cap
22 Plan, Qwest shall file, along with other required materials, productivity evidence for the
23 past 2 years under price regulation." If the Plan requires a rate reduction in April 2004
24 for the third year, it only makes sense that this reduction was intended to be based on the

25 ² Staff's argument on this point is extremely brief and also does not cite any specific authority.
26 Staff's Response at 3. Accordingly, Qwest's response to RUCO on this point is also addressed
 to Staff, to the extent applicable.

1 productivity information Qwest was required to provide.

2 In a related argument, Staff suggests that the Plan required “Basket 1 adjustments
3 for each of the three years the Plan was effective. Qwest has only made the Basket 1
4 adjustment for the first two years of the Plan. The third adjustment required under the
5 terms of the Plan is to be made on April 1, 2004.” Staff’s Response at 2. This argument
6 ignores the fact that the Settlement Agreement required immediate Basket 1 rate
7 reductions at the beginning of the Plan. Decision No. 63487 at 9; Settlement Agreement
8 at 3. The April 2004 adjustment will actually be the fourth Basket 1 reduction in the
9 three-year Plan. The incongruity of Staff’s interpretation is even more obvious because
10 the fourth adjustment required under Decision No. 66772 comes *after* the initial term of
11 the Plan expires on March 31, 2004.

12 RUCO argues that Qwest’s Motion would be inconsistent with Decision No.
13 66772 simply because performing the required calculation with current data results in an
14 adjustment of zero. RUCO’s Response at 5-6. This argument is simply incorrect; the
15 Price Cap Plan itself expressly contemplates the possibility that the adjustment will be
16 zero under certain circumstances. Price Cap Plan, ¶ 2(b)(iv) (“The ‘Inflation Minus
17 Productivity’ calculation shall be capped at zero and has no lower bound.”). Decision
18 No. 66772 does not call for a 4.2% reduction in April 2004 – it simply calls for a
19 reduction “pursuant to the terms of the Plan.” Decision No. 66772 at 5. As noted above,
20 the Price Cap Plan expressly calls for consideration of new data during the third year of
21 the initial term.

22 RUCO also argues that the Commission’s intention in adopting the Price Cap Plan
23 “was that Qwest would improve its efficiency.” RUCO’s Response at 3-4. RUCO
24 apparently believes that because the Plan failed in this respect, or at best had no impact,
25 the Commission should do more of the same. Again, this is an issue for consideration
26 during the proceedings on a revised Price Cap Plan.

1 **3. Assuming the Commission had authority to order another productivity**
2 **adjustment on April 1, 2004, Qwest's proposed revision is consistent**
3 **with Arizona law, including *Scates* and the fair value standard.**

4 RUCO and Staff suggest that Qwest's Motion is not consistent with Arizona law.³
5 Staff's Response at 2-3; RUCO's Response at 2-3. RUCO correctly recognizes that "the
6 Commission is required to make a finding of fair value when it *changes* a utility's rates."
7 RUCO's Response at 2 (emphasis added). Nevertheless, RUCO has essentially taken the
8 position that the Commission has the power to take provisions from the initial three-year
9 term of the Plan, and extrapolate them forward to make additional adjustments to Qwest's
10 rates after the initial term of the Plan has expired. *Id.* at 3. This argument is apparently
11 based on the premise that the productivity adjustment formula is an automatic adjustment
12 provision within the meaning of Arizona law authorizing such ongoing adjustments. *Id.*

13 RUCO's premise is clearly wrong. Arizona courts have defined automatic
14 adjustment mechanisms narrowly, and the productivity factor clearly does not fall within
15 the definition. An automatic adjustment clause is "a device to permit rates to adjust
16 automatically, either up or down, in relation to fluctuations in certain, *narrowly defined*,
17 operating expenses." *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 535, 578 P.2d 612,
18 616 (App. 1978) (emphasis added). The expenses indexed into an automatic adjustment
19 mechanism cannot be general operating expenses, but must be "easily segregated costs of
20 specific purchased items such as fuel or electricity." *Id.* at 536, 578 P.2d at 617. By
21 contrast, the productivity adjustment at issue here is a complex estimate of Qwest's future
22 gains in overall operating efficiency. The various alternative theories of productivity
23 adjustment offered by AT&T and RUCO show that the productivity number is not easily
24 established by reference to specific costs. Qwest believes that the initial Price Cap Plan
25 complied with Arizona law not because the productivity index was an automatic

26 ³ Qwest's reply to RUCO is again intended to apply to Staff's brief argument on this issue.
Staff's Response at 2-3.

1 adjustment, but rather because the Plan was implemented through the Settlement
2 Agreement and because it included specified rate adjustments that were established in
3 advance for a limited period of time.

4 Based on the same line of Arizona cases cited by RUCO, Qwest maintains that the
5 Commission cannot change rates after the expiration of the Plan's initial term without a
6 fair value finding, and must therefore leave current rates in effect until new rates can be
7 properly established. *See, e.g., Scates*, 118 Ariz. 531, 578 P.2d 612 (App. 1978)
8 (Commission without authority to *increase* the rate); *Mountain States Tel. & Tel. Co. v.*
9 *Arizona Corp. Com'n*, 137 Ariz. 566, 567-68, 672 P.2d 495, 496-97 (App. 1983)
10 (Commission must determine whether *increase* is just and reasonable). An automatic
11 adjustment clause within the narrow meaning of Arizona law could theoretically stay in
12 place indefinitely precisely because it is tied to specific costs, and is therefore revenue
13 neutral. By contrast, the Commission cannot extend the 4.2% rate reductions established
14 during the initial term of the Plan without determining whether Qwest's revenue is
15 affected. If the Commission has the power to extend any productivity adjustment beyond
16 the initial term of the Plan, those additional adjustments should be based on updated
17 information or the cuts will become increasingly arbitrary over time.

18 **III. CONCLUSION.**

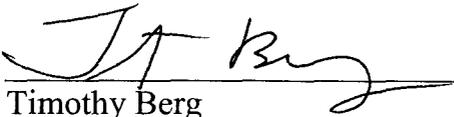
19 Qwest agrees with the parties who have noted that attempting to make a rate
20 adjustment during the interim period after expiration of the initial term of the Plan
21 disrupts the normal procedural schedule of the rate case and raises a number of difficult
22 legal and procedural issues. However, the Commission has ordered that a rate adjustment
23 be made on April 1, 2004. Qwest is simply trying to ensure that the adjustment is as
24 consistent as possible with the terms of the Plan and Arizona law.

25 For the reasons stated above, Qwest's Motion to revise the productivity factor
26 established in the initial term of the Price Cap Plan should be granted.

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RESPECTFULLY SUBMITTED this ^{31st} day of March, 2004.

FENNEMORE CRAIG

By: 

Timothy Berg
Theresa Dwyer
3003 North Central Ave., Suite 2600
Phoenix, Arizona 85012-2913
(602) 916-5421

-and-

Norman Curtright
QWEST LAW DEPARTMENT
4041 North Central Avenue
11th Floor
(602) 630-2187
Attorneys for Qwest Corporation

ORIGINAL and 15 copies hand-delivered for
filing this 31st day of March, 2004 to:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
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COPY of the foregoing delivered
this 31st day of March, 2004 to:

Jane Rodda
Administrative Law Judge
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Maureen A. Scott
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

1 Ernest G. Johnson, Director
Utilities Division
2 ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
3 Phoenix, AZ 85007

4 COPY of the foregoing mailed
this 31st day of March, 2004 to:

5 Joan S. Burke
6 Osborne Maledon
2929 N. Central Ave., 21st Fl.
7 Phoenix, AZ 85067

8 Scott S. Wakefield, Chief Counsel
Daniel W. Pozefsky, Esq.
9 RUCO
1110 West Washington, Suite 220
10 Phoenix, AZ 85007

11 Michael W. Patten
Roshka Heyman & DeWulf, PLC
12 One Arizona Center
400 East Van Buren Street, Suite 800
13 Phoenix, Arizona 85004

14 Mark A. DiNunzio
Cox Arizona Telcom, LLC
15 20401 North 29th Avenue
Phoenix, Arizona 85027

16 Thomas H. Campbell
17 Michael T. Hallam
Lewis and Roca
18 40 N. Central Avenue
Phoenix, Arizona 85004

19 Thomas F. Dixon
20 WorldCom, Inc.
707 17th Street, 39th Floor
21 Denver, Colorado 80202

22 Richard S. Wolters
Mary Tribby
23 AT&T
1875 Lawrence Street, Room 1575
24 Denver, CO 80202-1847

25

26

- 1 Peter Q. Nyce, Jr.
Regulatory Law Office
- 2 U.S. Army Litigation Center
901 N. Stuart Street, Suite 713
- 3 Arlington, VA 22203-1837

- 4 Richard Lee
Snavelly King Majoros O'Connor & Lee
- 5 1220 L. Street N.W., Suite 410
Washington, DC 20005

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

- 9 Accipiter Communications, Inc.
2238 W. Lone Cactus Dr., Ste.100
- 10 Phoenix, AZ 85027

- 11 Alliance Group Services, Inc.
1221 Post Road East
- 12 Westport, CT 06880

- 13 Archtel, Inc.
1800 West Park Drive, Ste. 250
- 14 Westborough, MA 01581

- 15 Brooks Fiber Communications of Tucson, Inc.
201 Spear Street, 9th Floor
- 16 San Francisco, CA 94105

- 17 Centruytel
PO Box 4065
- 18 Monroe, LA 71211-4065

- 19 Citizens Utilities Rural Co. Inc.
Citizens Communications Co. of Arizona
- 20 4 Triad Center, Suite 200
Salt Lake City, UT 84180

- 21 Citizens Telecommunications Co. of the White Mountains, Inc.
22 4 Triad Center, Ste. 200
Salt Lake City, UT 84180

- 23 Comm South Companies, Inc.
24 2909 N. Buckner Blvd., Ste. 200
Dallas, TX 75228

- 25

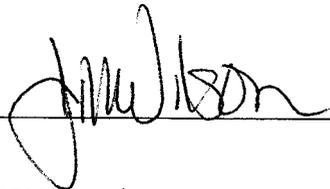
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- 4 Salt Lake City, UT 84180
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730 Second Avenue South, Ste.1200
- 6 Minneapolis, MN 55402
- 7 Ernest Communications, Inc.
6475 Jimmy Carter Blvd., Ste. 300
- 8 Norcross, GA 30071
- 9 Global Crossing Local Services, Inc.
180 South Clinton
- 10 Rochester, NY 14646
- 11 Global Crossing Telemanagement, Inc.
180 South Clinton
- 12 Rochester, NY 14646
- 13 Global Crossing Telecommunications, Inc.
180 South Clinton
- 14 Rochester, NY 14646
- 15 Intermedia Communications, Inc.
3608 Queen Palm Drive
- 16 Tampa, FL 33619-1311
- 17 Level 3 Communications, LLC
1025 Eldorado Blvd.
- 18 Broomfield, CO 80021
- 19 Max-Tel Communications, Inc.
105 N. Wickham
- 20 PO Box 280
- 21 Alvord, TX 76225
- 22 MCI WorldCom Communications
201 Spear Street, 9th Floor
- 23 San Francisco, CA 94105
- 24 MCIMetro
201 Spear Street, 9th Floor
- 25 San Francisco, CA 94105
- 26

- 1 Metropolitan Fiber Systems of Arizona, Inc.
201 Spear Street, 9th Floor
San Francisco, CA 94105
- 3 Midvale Telephone Exchange
PO Box 7
Midvale, ID 83645
- 5 Navajo Communications Co., Inc.
4 Triad Center, Suite 200
Salt Lake City, UT 84180
- 7 Nextlink Long Distance Svcs.
3930 E. Watkins, Ste. 200
Phoenix, AZ 85034
- 9 North County Communications Corporation
3802 Rosencrans, Ste. 485
San Diego, CA 92110
- 11 One Point Communications
Two Conway Park
150 Field Drive, Ste. 300
Lake Forest, IL 60045
- 13 Opex Communications, Inc.
500 E. Higgins Rd., Ste. 200
Elk Grove Village, IL 60007
- 15 Pac-West Telecomm, Inc.
1776 W. March Lane, #250
Stockton, CA 95207
- 17 The Phone Company/Network Services of New Hope
6805 Route 202
New Hope, PA 18938
- 19 Rio Virgin Telephone Co.
Rio Virgin Telephone and Cablevision
PO Box 189
Estacada, OR 97023-000
- 22 Rhythm Links, Inc.
9100 E. Mineral Circle
Englewood, CO 80112
- 24 San Carlos Apache Telecommunications Utility, Inc.
PO Box 701
245 S. Hill
Globe, AZ 85502
- 26

- 1 South Central Utah Telephone Association, Inc.
PO Box 226
- 2 Escalante, UT 84726-000
- 3 Southwestern Telephone Co., Inc.
PO Box 5158
- 4 Madison, WI 53705-0158
- 5 Special Accounts Billing Group
1523 Withorn Lane
- 6 Inverness, IL 60067
- 7 Sprint Communications Company, L.P.
6860 W. 115th, MS:KSOPKD0105
- 8 Overland Park, KS 66211
- 9 Touch America
130 N. Main Street
- 10 Butte, MT 59701
- 11 Table Top Telephone Co, Inc.
600 N. Second Avenue
- 12 Ajo, AZ 85321-0000
- 13 TCG Phoenix
1875 Lawrence Street, Room 1575
- 14 Denver, CO 80202
- 15 Valley Telephone Cooperative, Inc.
752 E. Malley Street
- 16 PO Box 970
- 17 Willcox, AZ 85644
- 18 Verizon Select Services Inc.
6665 MacArthur Blvd, HQK02D84
- 19 Irving, TX 75039
- 20 VYVX, LLC
One Williams Center, MD 29-1
- 21 Tulsa, OK 74172
- 22 Western CLEC Corporation
3650 131st Avenue SE, Ste. 400
- 23 Bellevue, WA 98006
- 24 Williams Local Network, Inc.
One Williams Center, MD 29-1
- 25 Tulsa, OK 74172
- 26

1 XO Arizona Inc.
2 3930 Watkins, Ste. 200
3 Phoenix, AZ 85034

4 
5 _____

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