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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

Arizona Corporation Commission

DOCKETED

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

APR 30 2004

DOCKETED BY
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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH § 271 OF THE TELECOMMUNICATIONS
ACT OF 1996.

DOCKET NO. T-00000A-97-0238

IN THE MATTER OF QWEST CORPORATION'S
COMPLIANCE WITH SECTION 252(e) OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. RT-00000F-02-0271

ARIZONA CORPORATION COMMISSION

DOCKET NO. T-01051B-02-0871

Complainant.

v.

Decision No. 66949

QWEST CORPORATION,

Respondent.

OPINION AND ORDER

DATE OF HEARINGS:

March 17, 18, 19 and 20, 2003 (Section 252(e) investigation); June 13, 2003 (OSC); and September 16 and 17, 2003 (Settlement Agreement)

PLACE OF HEARINGS:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGES

Jane L. Rodda
Dwight D. Nodes

IN ATTENDENCE:

Chairman Marc Spitzer
Commissioner Mike Gleason

APPEARANCES:

Mr. Timothy Berg, FENNEMORE CRAIG, PC,
Mr. Peter Spivak and Mr. Douglas Nazaron,
HOGAN & HARTSON, LLP, and Mr. Todd
Lundy, Corporate Counsel for Qwest
Corporation;

Mr. Richard Wolters, for AT&T
Communications of the Mountain States, Inc.;

1 Ms. Joan Burke, OSBORN MALEDON, PA, for
2 Time Warner Telecom;

3 Mr. Martin A. Aronson, MORRILL &
4 ARONSON, PLC, for Arizona Dialtone, Inc.;

5 Mr. Mitchell F. Brecher, GREENBERG
6 TRAURIG, LLP, for Mountain
7 Telecommunications, Inc.;

8 Mr. Daniel Pozefsky, Attorney for the
9 Residential Utility Consumer Office;

10 Mr. Thomas Campbell, LEWIS & ROCA, LLP,
11 and Mr. Dennis Ahlers, Corporate Counsel, for
12 Eschelon Telecom;

13 Mr. Thomas F. Dixon for WorldCom; and

14 Ms. Maureen Scott and Mr. Gary Horton, Staff
15 Attorneys on behalf of the Utilities Division of
16 the Arizona Corporation Commission.

17 **BY THE COMMISSION:**

18 The following three dockets involving enforcement actions against Qwest Corporation
19 ("Qwest") are before the Arizona Corporation Commission ("Commission") for consideration: the
20 investigation into Qwest's compliance with Section 252(e) of the Telecommunications Act of 1996
21 ("1996 Act"); the Section 271 Sub-docket involving an investigation into whether Qwest interfered in
22 the Section 271 regulatory process; and the Order to Show Cause for Delayed Implementation of
23 Wholesale Rates. The Commission held hearings in the Section 252 investigation commencing on
24 March 17, 2003 and in the OSC on June 13, 2003. On July 25, 2003, Commission Utility Division
25 Staff ("Staff") and Qwest filed a proposed Settlement Agreement, which would, if adopted, resolve
26 allegations that Qwest violated federal and state law and Commission regulations and Orders raised
27 in the three dockets. The Commission convened a hearing on the Settlement Agreement
28 commencing on September 16, 2003.

Background

The Section 252(e) Proceeding

Section 252(e) of the 1996 Act requires an Incumbent Local Exchange Carrier ("ILEC"), such

1 as Qwest, to file all interconnection agreements between it and a Competitive Local Exchange Carrier
2 ("CLEC") with the Commission for approval. The issue of Qwest's compliance with Section 252(e)
3 of the 1996 Act first came to light in Arizona when the Minnesota Department of Commerce filed a
4 complaint against Qwest alleging that Qwest had not filed certain agreements with the Minnesota
5 Public Utilities Commission for approval as required under Section 252(e). At then Chairman
6 Mundell's request, Qwest was directed to submit any and all un-filed Arizona agreements to the
7 Commission for review.¹ On March 8, 2002, AT&T Communications of the Mountain States, Inc.
8 and TCG Phoenix ("TCG") (collectively "AT&T") filed a Motion with this Commission in the
9 Section 271 docket asking the Commission to examine whether Qwest was complying with Section
10 252 in the context of the Section 271 investigation.

11 By Procedural Order dated April 8, 2002, the Commission determined to open a separate
12 docket to investigate Qwest's Section 252 compliance. On June 7, 2002, based upon comments filed
13 by interested parties and its own review of the facts and law, Staff filed a Report and
14 Recommendation in the Section 252(e) docket. In its Report, Staff identified approximately 25
15 agreements that it believed should have been filed by Qwest under Section 252(e). Pursuant to
16 A.R.S. § 40-425, Staff recommended penalties totaling \$104,000 based on \$3,000 for each un-filed
17 agreement, and \$5,000 for each agreement that contained a clause that prevented CLEC participation
18 in the Section 271 investigation.

19 The Commission held a Procedural Conference on June 19, 2002, during which the
20 Residential Utility Consumer Office ("RUCO") raised a new issue involving the existence of oral
21 agreements between Qwest and McLeodUSA, Inc. ("McLeod"), and urged the Commission to
22 broaden its examination to include the damage to competition and to other CLECs in the State
23 resulting from Qwest not filing these agreements. The Commission directed Staff to conduct
24 additional discovery of all CLECs operating in Arizona to determine the number of un-filed
25 agreements and whether the un-filed agreements had tainted the record in the Section 271 proceeding.

26 On August 14, 2002, Staff issued a Supplemental Report and Recommendation concerning
27

28 ¹ Qwest submitted approximately 90 agreements.

1 Qwest's Compliance with Section 252(e). In its Supplemental Report, based upon the additional
2 discovery, Staff recommended that a hearing should be held to determine whether Qwest acted in
3 contempt of Commission rules by not filing certain McLeod and Eschelon Telecom, Inc.
4 ("Eschelon") agreements with the Commission for approval. Staff further recommended the Section
5 252(e) proceeding be separated into two phases, with Phase A addressing filing violations and Phase
6 B addressing any opt-in disputes between Qwest and CLECs.

7 By Procedural Order dated November 7, 2002, the Commission set the Section 252(e)
8 compliance issues for hearing. The hearing commenced on March 17, 2003, and continued through
9 March 20, 2003. The parties filed Initial Briefs on May 1, 2003, and Reply Briefs on May 15, 2003.

10 In its investigation, Staff identified 42 agreements that it believed Qwest should have filed
11 with the Commission for approval pursuant to Section 252(e). Qwest agreed that 14 of them
12 contained terms that pertain to Section 251(b) or (c) services and were still in effect. Qwest filed
13 these agreements in September 2002 and the Commission approved them in Decision No. 65475
14 (December 19, 2002).² Staff and Qwest disagreed about whether the remaining 28 agreements were
15 required to be filed under Section 252(e). Qwest disputed that these agreements fell under the
16 Section 252 requirement for a variety of reasons, including that some had been terminated or
17 superceded, some contained only backward-looking provisions, others were form agreements, or they
18 didn't involve Section 251(b) or (c) services. A list of the 28 interconnection agreements that Staff
19 claims Qwest should have filed is attached as Exhibit B hereto.

20 Among the 28 agreements Staff believed Qwest should have filed were a series of agreements
21 with Eschelon and McLeod. At the hearing, Staff and RUCO presented evidence that the agreements
22 with Eschelon and McLeod were drafted specifically in an attempt to avoid the filing requirements of
23 Section 252 in order to avoid having other CLECs opt into favorable provisions. In 2000, Eschelon
24 and McLeod were two of Qwest's largest resellers. Both wanted to move away from reselling
25 Centrex products and wanted to provide service over an unbundled network element platform
26 ("UNE-P"). Under UNE-P, they believed they would earn higher margins and be able to collect their

27 ² In approving the agreements, the Commission did not approve specific provisions that would have: prevented
28 participation in other dockets; required confidentiality; required confidential private binding arbitration in lieu of bringing
an action before this Commission; or required interpretation under Colorado law.

1 own access fees.

2 In the summer of 2000, McLeod and Qwest began negotiations that resulted in a Confidential
3 Billing Settlement Agreement entered into on September 29, 2000, in which McLeod agreed to pay
4 Qwest an amount for the conversion from resale to UNE-P. Qwest and McLeod finalized their
5 agreement on October 26, 2000, when they executed a series of six agreements. The key component
6 of these agreements was the creation of a product called UNE-Star (or UNE-M when purchased by
7 McLeod). The UNE-M product is a flat-rated UNE platform that converted McLeod resold lines
8 directly to UNE-P. With UNE-M, McLeod would avoid the provisioning issues associated with
9 UNE-P, such as submitting individual Local Service Requests ("LSRs") for each line.

10 One of the agreements entered into on October 26, 2000 is the Fourth Amendment to the
11 Qwest/McLeod Interconnection Agreement in Arizona, which McLeod filed with the Commission on
12 December 26, 2000. This document sets out the publicly disclosed terms and conditions of the UNE-
13 M product. In this agreement, McLeod agreed to pay Qwest \$43.5 million to convert to the UNE-M
14 platform. McLeod agreed *inter alia* to maintain a minimum number of local exchange lines, to
15 remain on "bill and keep" for the exchange of Internet-related traffic, and to provide rolling 12-month
16 forecasted line volumes. Qwest agreed *inter alia* to provide daily usage information to McLeod so
17 that McLeod could bill interexchange companies and others for switched access.

18 In addition to the publicly disclosed Fourth Amendment to the Interconnection Agreement, on
19 October 26, 2000, Qwest and McLeod also entered into several agreements that were not filed or
20 otherwise made public. One was the Purchase Agreement in which McLeod agreed to purchase from
21 Qwest Communications Corporation ("QCC", Qwest's affiliate), its subsidiaries or affiliates, a
22 certain amount of services and products over a multi-year period. No. 15 on Exhibit B. At the same
23 time, they entered into a Purchase Agreement in which QCC and its subsidiaries agreed to purchase
24 products from McLeod over the same multi-year period. No. 16 on Exhibit B. McLeod and Qwest
25 also entered into an Amendment to Confidential Billing Settlement Agreement which revised the
26 Confidential Billing Settlement Agreement entered into on September 29, 2000. No. 13 on Exhibit
27 B. This Amendment revised the earlier agreement to conform with the ultimately agreed upon
28 payment amount from McLeod for the conversion and agrees with the amount set forth in the Fourth

1 Amendment to the Interconnection Agreement that was filed.

2 In addition to these written agreements, McLeod claims that it and Qwest entered into two
3 oral agreements, one of which provided a 10 percent discount on McLeod's purchases from Qwest
4 and the other precluded McLeod from participating in Qwest's Section 271 application. (No. 14 on
5 Exhibit B) (RUCO's Section 252 Initial Brief p. 30) Blake Fisher, McLeod's vice president and chief
6 planning and development officer, who was involved in the negotiations, testified in his deposition
7 that in developing the UNE-Star product, McLeod was not satisfied that the pricing was sufficiently
8 low to justify McLeod keeping its traffic on Qwest's network. Thus, Qwest and McLeod agreed to
9 enter into the Purchase Agreements whereby McLeod would purchase goods and services from
10 Qwest and Qwest agreed to provide McLeod with discounts ranging from 6.5 percent to 10 percent if
11 McLeod's purchases exceeded its take-or-pay commitments. (RUCO's Section 252 Initial Brief at p.
12 28) Mr. Fisher stated that Qwest did not want to put the discount agreement into writing because
13 Qwest was concerned that other CLECs might feel entitled to the same discount. In response to Mr.
14 Fisher's concerns that the discount provision was not in writing, Qwest agreed to a take-or-pay
15 agreement to purchase products from McLeod. According to Mr. Fisher, the amount of the Qwest
16 take-or-pay commitment was calculated by applying the discount factor to a projected amount of
17 purchases by McLeod from Qwest.

18 Qwest made payments to McLeod pursuant to the Purchase Agreements from October 2000
19 through September 2001. Qwest prepared spreadsheets that calculated the amount of the payment by
20 applying the 10 percent discount factor to all purchases made by McLeod during the relevant time
21 period. (RUCO's Section 252 Initial Brief at p. 31) After McLeod would confirm the accuracy of
22 the spreadsheets, McLeod would send Qwest an invoice. Qwest paid invoices for the period October
23 2000 through March 2001, April 2001 through June 2001, and July 2001 through September 2001.
24 Qwest did not make payments on the amount that would have been due for the fourth quarter of 2001
25 because this is when the Department of Commerce in Minnesota began investigating the discount
26 agreement. Various Qwest emails and notes relating to the negotiations with McLeod and with the
27 calculation of the discount due are consistent with Mr. Fisher's account of events. Although no
28 written agreement refers to a 10 percent discount in McLeod's purchases, Qwest acted consistently

1 with the existence of such discount.

2 On November 15, 2000, Qwest and Eschelon entered into an Escalation Procedures and
3 Business Solutions Letter, in which the parties agreed: to develop an implementation plan; that
4 Eschelon agreed to not oppose Qwest efforts to obtain Section 271 approval or file any complaints
5 with any regulatory body concerning interconnection agreements provided the plan was in place by
6 April 30, 2001; that Qwest would send a vice president level or above executive to attend quarterly
7 meetings with Eschelon to address, discuss and attempt to resolve business issues and disputes and
8 issues related to the parties' interconnection agreements; that Qwest would adopt a six-level set of
9 escalation procedures that gave Eschelon access to Qwest's senior management; and that Qwest
10 would waive limitations on damages. (No. 5 on Exhibit B; Kalleberg Section 252 testimony at p.30)

11 Also, on November 15, 2000, Qwest and Eschelon entered into the Confidential Amendment
12 to Confidential/Trade Secret Stipulation in which Eschelon agreed to purchase at least \$15 million of
13 telecommunication services between October 1, 2000 and September 30, 2001 and Qwest agreed to
14 pay Eschelon \$10 million to resolve issues related to the UNE platform and switched access. (No. 4
15 on Exhibit B; Kalleberg Section 252 testimony at p. 29) In addition, Eschelon agreed to provide
16 consulting and network-related services and Qwest agreed to pay Eschelon 10 percent of the
17 aggregate billed charges for all of Eschelon's purchases from Qwest from November 15, 2000
18 through December 31, 2005. Qwest also agreed to credit Eschelon \$13.00 per UNE-platform line per
19 month for each month during which Qwest failed to provide Eschelon with accurate daily usage
20 information.

21 Qwest disputed that the purchase agreements it entered into with McLeod and Eschelon are
22 subject to the filing requirements of the 1996 Act because an ILEC's contract to purchase services
23 from CLEC vendors do not affect the terms of the CLEC's interconnection. Thus, Qwest argued the
24 Purchase Agreement between QCC and McLeod entered into on October 26, 2000 in which QCC
25 commits to purchase a minimum amount of services from McLeod, and agreements by the CLECs to
26 purchase products and services from Qwest or QCC do not include any commitment by Qwest that is
27 subject to the Section 251/252 regulatory framework. Furthermore, Qwest argued, even if the
28 CLECs' purchase agreements were entered into as a means of conferring discounts to Eschelon and

1 McLeod, only the discount provisions of the agreements would fall within the filing requirement of
2 Section 252.

3 With respect to the agreements related to the UNE-Star product, Qwest claims that the rates
4 terms and conditions of the UNE-Star were negotiated and filed as amendments to Eschelon's and
5 McLeod's existing interconnection agreements and were subsequently approved by the Arizona
6 Commission. Qwest says these amendments reflect the significant development and implementation
7 costs associated with the UNE-Star products and as a result, of those costs, Qwest required CLECs
8 wishing to purchase the UNE-Star products to make total and annual minimum purchase
9 commitments over a multi-year minimum term. Other requirements included imposing a significant
10 penalty if the CLEC did not meet these minimum commitments; "bill and keep" for reciprocal
11 compensation, including internet traffic; and a one-time, lump sum conversion charge, restricting the
12 offering to business customers and providing end user volume and loop distribution forecasts. Qwest
13 states as approved interconnection amendments, all of the UNE-Star rates, terms and conditions were
14 available to any requesting CLEC in Arizona under Section 252(i). Qwest concedes that certain
15 provisions in un-filed agreements that related to the UNE-Star platform fall within the FCC's recently
16 articulated definition of interconnection agreement, but since no other CLEC purchased a variation of
17 UNE-Star, no other CLEC would have been eligible to opt into the un-filed provision even if they
18 had been filed and approved.

19 Qwest argued that it did not discriminate against Arizona CLECs, as its witnesses testified
20 that all of Qwest's wholesale customers received the same level of service and their orders were
21 processed under the same standards, and no party to the proceeding showed that Eschelon or McLeod
22 received better service quality than any other CLEC.

23 Staff recommended that the Commission fine Qwest \$15,047,000 pursuant to A.R.S. §§ 40-
24 424 and 40-425. Staff's recommended penalties were broken down as follows: 1) \$36,000 (\$3,000
25 for the 12 agreements with carriers other than Eschelon and McLeod); 2) \$11,000 (\$1,000 for each of
26 the 11 agreements with carriers other than Eschelon and McLeod that Qwest filed for approval in
27 September 2002); and 3) \$15,000,000 for the agreements related to Eschelon and McLeod and with
28 other carriers if they contain the non-participation clauses.

1 Under A.R.S. § 40-425, the Commission may fine Qwest between \$100 and \$5,000 for each
2 failure to file. Staff determined the range of penalties under A.R.S. § 40-425 to be between \$4,200
3 and \$210,000, and recommended penalties for the 23 non-Eschelon/McLeod agreements totalling
4 \$47,000. Staff believed that Qwest's failure to file the 23 agreements that were with carriers other
5 than Eschelon and McLeod was inadvertent as a result of its misinterpretation of its obligations under
6 Section 252.

7 Because Staff believed Qwest's failure to file the Eschelon and McLeod agreements was
8 willful and intentional, Staff recommended penalties based on the number of days Qwest's violation
9 continues. For every agreement between Qwest and Eschelon or McLeod or with another carrier if
10 that agreement contains a non-participation clause, Staff calculated the number of days from the date
11 the agreement should have been filed pursuant to A.A.C. R14-2-1506³ and the dates the agreements
12 were terminated, or if still in effect, through March 20, 2003 (the date Staff calculated the penalties in
13 its April 1, 2003 Post-hearing exhibit). Staff argues that these penalties continue for each day Qwest
14 fails to file these agreements. Through March 20, 2002, Staff calculated that Qwest was in contempt
15 of Commission rules for a total of 8,848 days. Pursuant to A.R.S. § 40-424, Staff calculated the
16 Commission could impose a penalty between \$884,800 and \$44,240,000. Staff recommended a
17 penalty of \$15,000,000.

18 Staff also recommended non-monetary penalties which included (1) requiring Qwest to file all
19 of the previously un-filed agreements and that interested CLECs be permitted to opt into those
20 agreements for two years from the date of Commission approval; (2) requiring Qwest to provide
21 each CLEC (other than Eschelon and McLeod) with a cash payment totaling 10 percent of the
22 CLEC's purchases of Section 251(b) or (c) services and 10 percent of its purchases of intrastate
23 access from Qwest in Arizona for the period from January 1, 2001 through June 30, 2002, and
24 requiring Qwest to provide each CLEC (except Eschelon and McLeod) with a credit totaling 10
25 percent of its purchases of Section 251(b) or (c) service and 10 percent of its purchases of intrastate
26 access from Qwest in Arizona for 18 months following the date of the Commission's decision; (3)

27 _____
28 ³ In addition to the filing requirements of section 252 of the 1996 Act, A.A.C. R14-2-1506 requires that an
interconnection agreement be filed for approval within 30 days of its execution.

1 modifications to certain Performance Indicator Definitions ("PIDs") that measure wholesale service
 2 quality standards to ensure the provision of a minimum level of service to CLECs and foster
 3 competition; and (4) requiring Qwest to develop a Code of Conduct that will govern its relationship
 4 with CLECs and include prohibitions against the same (or similar) anti-competitive actions revealed
 5 in this investigation.

6 **The Section 271 Sub-docket**

7 During its investigation of Qwest's compliance with Section 252 filing requirements, Staff
 8 identified agreements with four carriers (Z-Tel, Eschelon, McLeod and XO) which prohibited these
 9 carriers from participating in Qwest's Section 271 proceeding. In its August 14, 2002 Supplemental
 10 Report, Staff recommended that the Commission open a sub-docket to the Section 271 investigation
 11 for the purpose of addressing allegations of interference with the regulatory process and determining
 12 appropriate penalties. In its November 7, 2002 Procedural Order, the Commission ordered parties to
 13 file comments on Staff's proposed sub-docket procedures, including the need for a hearing, no later
 14 than December 10, 2002. By Procedural Order dated December 20, 2002, all letters, comments and
 15 data responses identified in the Supplemental Report were made part of the Section 271 Sub-docket
 16 record. Parties were given until January 10, 2003, to submit additional evidence. Qwest, RUCO,
 17 Eschelon, AT&T and WorldCom filed comments.

18 Staff set forth the results of its investigation in its Report and Recommendation in the 271
 19 Sub-docket which it filed on May 6, 2003. McLeod indicated in response to Staff inquiries that it had
 20 orally agreed to remain neutral on Qwest's Section 271 application as long as Qwest was in
 21 compliance with all of its agreements with McLeod and all applicable statutes and regulations. Z-Tel
 22 advised Staff that it had agreed not to participate in Section 271 proceedings for a period of 60 days
 23 while they were negotiating interconnection agreements with Qwest in eight states.⁴ Eschelon
 24 provided substantial comment on the fact that it had a signed un-filed contract in which it agreed not
 25 to oppose Qwest in its Section 271 proceedings. XO stated that it did not participate in Arizona's 271
 26

27 ⁴ Staff states that Z-Tel was an active participant in the Arizona PAP workshops, but entered into the two month stand-
 28 down agreement during the briefing stage of those workshops. Z-Tel filed an initial brief jointly with WorldCom on May
 11, 2001. The Stand-down was executed May 18, 2001. Z-Tel did not participate in the Reply Brief stage of the
 proceeding, nor in the PAP open meeting.

1 proceeding because it did not have sufficient operations or experience with Qwest to warrant
2 participation, but Staff found an agreement between Qwest and XO with provisions that required XO
3 to stipulate that Qwest was in compliance with Section 271 requirements. Four CLECs (Eschelon,
4 Covad, AT&T and WorldCom) responded to Staff that they were aware of Section 271 issues that
5 they believed were not adequately addressed in the Arizona proceedings as a result of Qwest's un-
6 filed agreements with CLECs.

7 Qwest stated that only two agreements (the December 31, 2001 Confidential Billing
8 Settlement with XO and the November 15, 2000, Confidential Billing Agreement with Eschelon)
9 contained provisions concerning CLEC participation in the Section 271 proceeding. Qwest claims
10 the XO agreement resolved billing and reciprocal compensation disputes and provided that the
11 resolutions would be filed as an amendment to the XO interconnection agreement and filed within 15
12 days of execution of the agreement. Qwest states the amendment was filed on April 3, 2002 and
13 became available to other CLECs on July 2, 2002. Qwest states as part of the resolution of those
14 issues, XO agreed to stipulate that Qwest complies with the Section 271 Checklist Items in Arizona
15 and five other states. Qwest acknowledged that it entered into agreements with Eschelon and
16 McLeod that contained provisions whereby those CLECs agreed not to oppose Qwest's Section 271
17 application. For a period of time, Eschelon or McLeod either did not participate or limited their
18 involvement in that process. Qwest stated that suggestions that it prevented Eschelon from
19 participating in the Section 271 process are baseless, as Eschelon determined of its own free will to
20 work with Qwest to resolve business issues between them. Qwest stated that if Eschelon believed
21 Qwest was not living up to its commitments in the agreement, Eschelon could have sought redress
22 through regulatory or legal avenues. Qwest believed that the agreement with Eschelon served the
23 interest of Section 271 because its purpose was to develop an implementation plan that would
24 improve the provisioning process for all CLECs.

25 Staff held a Workshop on July 30-31, 2002, to address the concerns of parties who believed
26 that they had been precluded from raising issues in the Section 271 proceeding as a result of their
27 agreements with Qwest. Eschelon and McLeod raised issues during the workshop. Other parties
28 were allowed to participate to the extent they had issues which arose from the new evidence

1 presented.

2 In its May 6, 2003 Report, Staff expressed the belief that there is substantial evidence in the
3 record to conclude that Qwest interfered with the Section 271 regulatory process by requiring a
4 nonparticipation clause in its agreements with certain CLECs. These clauses precluded participation
5 by CLECs which otherwise would have participated and brought concerns regarding Qwest's
6 provision of wholesale service. Staff stated the completeness of the Commission's Section 271
7 record was adversely affected and that Qwest's conduct was intentionally designed to prevent certain
8 carriers from raising issues which would have reflected adversely on Qwest's Section 271
9 compliance. Staff believes that under A.R.S. § 40-424, the Commission can levy fines of up to
10 \$5,000 per calendar day, per occurrence. Based on the number of days between the dates the four
11 agreements at question were entered into and the date they were either cancelled, superceded or filed
12 with the Commission, Staff recommended penalties of \$7,415,000. Staff found that Qwest's
13 violation continued for 1,423 days. Staff recommended the maximum amount of penalties under
14 A.R.S. § 40-424 because Staff believed that Qwest acted intentionally and willfully in violation of
15 the Commission rules of process and Section 271 procedural orders when it failed to file with the
16 Commission interconnection agreements which prevented certain CLECs from participating in the
17 Section 271 investigation.

18 Staff further recommended four non-monetary penalties as follows: 1) Qwest must implement
19 and abide by all assurances contained in its December 23, 2002 filing⁵; 2) Qwest must establish an
20 independent, third party auditor to screen the work of the Agreement Review Commission regularly
21 for two years or until the Commission authorizes termination; 3) on an annual basis, Qwest should
22 attest to the fact that it has no agreements that preclude CLEC participation in Commission regulatory
23 proceedings, or that would tend to discourage them from such participation; and 4) the Commission
24 should conduct annual reviews of each December 23, 2002 filing commitment for two years, or until
25 the Commission is fully assured that transgressions of the past will not recur.

26 ⁵ In its December 23, 2002 Supplemental Comments to its Motion to Reconsider Procedural Order, Qwest cited actions it
27 was taking to assure Section 252 compliance, including an Independent Auditor to review the Agreement Screening
28 Committee's work, to file all settlement agreements in any proceeding with generic application, on a going-forward basis,
and creating a team of people to review all agreements with CLECs and apply FCC standard to ensure that all agreements
are properly filed going forward.

1 On May 19, 2003, Qwest filed Exceptions to the May 6, 2003 Staff Report and
2 Recommendation, and requested a hearing on the penalties proposed by Staff. Qwest argued that
3 Staff's proposed penalties are not appropriate because: (1) there is no Commission Order, rule or
4 requirement that prevents Qwest from entering into settlement agreements that contain non-
5 participation clauses; (2) the Commission does not have statutory authority to impose penalties based
6 on per-day violations; (3) no additional penalty is required on account of the nonparticipation
7 agreements because Staff eliminated the impact of those agreements by holding a workshop at which
8 CLECs could raise issues that they had not been able to raise on account of such provisions; and (4)
9 Staff had already recommended penalties based on these clauses in the Section 252(e) docket.

10 By Procedural Order dated June 19, 2003, the Commission scheduled a Procedural
11 Conference for June 30, 2003 to discuss the nature of further proceedings. On June 27, 2003, Qwest
12 and Staff filed a Joint Motion to Extend the Time for Procedural Conference, stating they were in the
13 process of negotiating a settlement agreement that involved the 271 Sub-docket. The Hearing
14 Division granted a continuance.

15 **Order to Show Cause for Delayed Implementation of Wholesale Rates**

16 On December 12, 2002, in Decision No. 65450, the Commission issued a Complaint and
17 Order to Show Cause ("OSC") against Qwest. The OSC alleged that Qwest failed to implement the
18 wholesale rate change ordered in Decision No. 64922 (June 12, 2002) within a reasonable period of
19 time, that Qwest failed to notify the Commission of the rate implementation delay, that Qwest failed
20 to obtain Commission approval of the delay in implementation, and that Qwest's wholesale rate
21 change system is unreasonably slow and inefficient. The OSC alleged three Counts of Contempt: (1)
22 failure to implement rates approved in Decision No. 64922 within a reasonable amount of time; (2)
23 deliberately delaying implementation of wholesale rate changes in Arizona until it had implemented
24 the wholesale rate changes in other states in which Qwest had pending Section 271 applications with
25 the FCC; and (3) attempting to discourage parties from notifying the Commission of its delay in
26 complying with Decision No. 64922.

27 AT&T, Staff and Qwest submitted testimony and the OSC hearing convened on June 13,
28 2003. The parties filed briefs on July 15, 2003.

1 Decision No. 64922 authorized revised wholesale rates. The Decision required Qwest to file
2 the price list agreed to by the parties within 30 days of the effective date of the Order. Qwest filed a
3 Notice of Compliance on June 26, 2002, two weeks after the adoption of the Decision. Qwest stated
4 it began implementing the new rates the next day. On October 7, 2002, AT&T sent a letter to the
5 Commission expressing concerns about the length of time it was taking Qwest to implement the
6 Arizona wholesale rates. Qwest completed the rate implementation for most companies on
7 December 15, 2002 and completed implementation for all companies on December 23, 2002. The
8 new rates were applied back to the effective date of the Decision, and CLECs were issued credits and
9 paid interest at six percent on the difference between what they had previously been billed and the
10 billable amounts using the new rates.

11 The ordering paragraphs of Decision No. 64922 provide in relevant part: "IT IS FURTHER
12 ORDERED that the rates and charges approved herein shall be effective immediately. IT IS
13 FURTHER ORDERED that this Decision shall become effective immediately." Staff argued that
14 Decision No. 64922 requires that Qwest implement the rates immediately or within a reasonable
15 period of time, which Staff believed would be between 30 and 60 days. Staff also argued that Qwest
16 implemented wholesale rates in six states where it had Section 271 applications pending with the
17 FCC prior to implementing the wholesale rates in Arizona even though the dates of the orders
18 authorizing the rates in the other states were after the effective date of the Arizona Decision. Staff
19 argued that even if Qwest is correct that the implementation of rates in the other states may have been
20 less complex than in Arizona, it is still apparent that Qwest diverted resources from Arizona to the
21 other states to support the Section 271 application and this prioritization and diversion of resources
22 was unreasonable. Staff believes that Qwest acted unreasonably by not starting its review of CLEC
23 agreements before its compliance filing and not having a process for easier and timelier mapping of
24 rate elements into interconnection agreements. Staff argued that Qwest's actions and omissions,
25 including not mechanizing its processes until too late to implement these rates, not notifying the
26 Commission or affected CLECs of its inability to implement the rates within a reasonable time, and
27 not seeking relief from the Commission for an extension to implement, indicate an intent to delay
28 implementation, or that Qwest did not intend to implement the rates in a reasonable amount of time.

1 Qwest admits that the implementation of the wholesale rates and its failure to notify the
2 Commission and CLECs about the implementation timeline was "inappropriate". (Qwest OSC Brief
3 at 5) Qwest argued, however, that its conduct in this docket was not intentional. Qwest argued that
4 the implementation process in Arizona was particularly complex due to a large number of rate
5 elements and multiple billing systems and the fact that changes must be made on a carrier-by-carrier
6 basis. Qwest states further that it implemented all comprehensive cost dockets sequentially in the
7 order of the effective date of the decision establishing the rates and that only certain voluntary rate
8 reductions were implemented prior to the implementation of Arizona wholesale rates. These rate
9 changes were based on reference to benchmark rates adopted in Colorado and it was more efficient to
10 implement them on an integrated basis.⁶ According to Qwest, the complexity of the benchmark rate
11 changes was significantly less than required in the Arizona's order—they involved an average of 35
12 changes versus 547 in Arizona and did not require CLEC-by-CLEC true ups, a determination of how
13 the rate changes applied to a given CLEC, or any restructuring of the rate elements and the necessary
14 resultant system changes. Qwest argued there was no evidence indicating the benchmark rate change
15 slowed implementation in Arizona, or that Qwest intentionally pushed Arizona to the end of the line
16 in implementing wholesale rates. Qwest stated that Arizona took an average of five months, while
17 implementation in Wyoming and Washington took more business days, Colorado took the same
18 number of business days, although two less calendar days, and Montana took two less business days
19 than Arizona.

20 Qwest stated it had already started to examine how to improve its rate implementation
21 processes including: 1) engaging an outside consultant to provide recommendations for automation;
22 2) implementing in the first quarter of 2003 a mechanized solution to shorten the time it takes to map
23 individual CLEC contracts; 3) designating a Program Management Office to oversee the
24 implementation process; 4) establishing a Cost Docket Governance Team to provide an oversight role
25 and an escalation point for issues and obstacles that may arise during the process; and 5) modifying

26 _____
27 ⁶ Benchmarking is an approach the FCC uses to evaluate UNE prices by comparing rates among states. Qwest used the
28 benchmark approach proactively in its 271 applications and compared eight states' rates to the Colorado rates (which it
believed were TELRIC-complaint), and where certain rates were higher than the Colorado benchmark, Qwest lowered
the rate to be equivalent to the Colorado rate.

1 its communications process to require increased correspondence with Commission Staff.

2 Pursuant to A.R.S. § 40-424, Staff recommended fines of \$750.00 per day for its failure to
3 notify the Commission of its rate implementation delay and failure to obtain approval of the delay;
4 and \$750 per day for its unreasonable prioritization of states ahead of Arizona. Staff's recommended
5 fines totaled \$189,000, based on a total of 126 days, the difference between the date Qwest completed
6 implementation of the wholesale rates and the date that Staff believed Qwest should have
7 implemented the rates (i.e. 60 days after the Effective Date of Decision No. 64992). In making its
8 recommendations, Staff took into account that Qwest made retroactive efforts to remedy the situation
9 including crediting the CLECs with interest on the overcharges and its intent to improve its rate
10 implementation process. In addition, Staff recommended that Qwest implement billing and systems
11 process changes that will allow it to implement wholesale rates within 30 days, and that such changes
12 should be implemented within four months of a Decision in this docket, and that Qwest should be
13 required to employ an independent auditor to evaluate and verify that the changes made by Qwest are
14 effective in allowing Qwest to implement wholesale rates changes within 30 days.

15 The Combined Cases

16 On July 25, 2003, Qwest and Staff filed a Notice of Filing Settlement Agreement and Request
17 for an Expedited Procedural Conference. The Settlement Agreement between Qwest and Staff
18 purports to resolve all the issues raised in the three enforcement dockets involving Qwest. A copy of
19 the Settlement Agreement between Staff and Qwest is attached hereto as Exhibit A, and incorporated
20 herein by reference.

21 On July 29, 2003, Qwest and Staff filed a Joint Proposed Procedural Schedule. A Procedural
22 Order dated August 7, 2003 consolidated the three cases and reopened their records to consider the
23 Proposed Settlement, established a schedule for testimony concerning the Settlement Agreement, and
24 set the matter for hearing. Pursuant to the Procedural Order, Staff and Qwest filed testimony on
25 August 14, 2003; AT&T, RUCO, Arizona Dialtone, Inc., ("ADI") and Mountain
26 Telecommunications, Inc. ("MTI") filed testimony on August 29, 2003; and Qwest filed rebuttal
27 testimony on September 8, 2003. Pursuant to the terms of the August 7, 2003 Procedural Order,
28 Time Warner Telecom ("Time Warner") and WorldCom filed comments to the Settlement

1 Agreement. The hearing was held on September 16 and 17, 2003. The parties filed initial briefs on
2 October 15, 2003 and reply briefs on October 29, 2003.

3 The Settlement Agreement

4 The proposed Settlement Agreement contains the following substantive provisions:

5 Recitals This section summarizes the underlying allegations and states Qwest's commitment
6 to (1) conduct its Arizona operations in compliance with state law and Commission regulations and
7 orders; (2) not to engage in any fraudulent, deceptive or unlawful behavior in any matter pending
8 before the Commission; and (3) to act in a manner evidencing respect for the Commission's
9 regulatory process. Qwest acknowledges that a breach of the Settlement Agreement may be punished
10 by contempt after notice and a hearing as provided by A.R.S. § 40-424. Qwest further acknowledges
11 the existence of concerns about the effect of the alleged wrong-doing, but explicitly states that it is
12 not admitting wrong-doing in the Settlement Agreement.

13 Section 1 Cash Payment This Section provides for Qwest to pay \$5,197,000 to the State's
14 General Fund within 30 days of the Effective Date of Commission approval. The aggregate cash
15 payment consists of three components: \$5,000,000 for the allegations concerning Qwest's willful
16 noncompliance with Section 252(e) and for Qwest's alleged interference with the Section 271
17 regulatory process; \$47,000 for un-filed interconnection agreements which Staff believes should have
18 been filed pursuant to Section 252(e) but for which Staff could not find that Qwest's actions were
19 intentional and willful; and \$150,000 for delayed implementation of the wholesale rates ordered by
20 the Commission in Decision No. 64922.

21 Section 2 Voluntary Contributions In this Section, Qwest agrees to make Voluntary
22 Contributions of at least \$6,000,000 for (1) economic development, (2) educational programs, and (3)
23 infrastructure investments, including those permitting the provision of service in un-served and
24 underserved territories. Qwest agrees that all investments shall be in addition to any investments,
25 construction or work already planned by Qwest. Qwest and Staff will submit a joint list of projects
26 for Commission consideration for allocating the Voluntary Contributions among the three categories.
27 The Settlement Agreement calls for either the Commission or Staff to provide guidance by
28 determining the percentage allocation of the Voluntary Contributions for each of the investment

1 categories prior to the submission of the proposed project list. The Commission will determine the
2 final allocation of how the funds will be allocated among specific projects.

3 Section 3 Discount Credits This Section provides that Eligible CLECs⁷ are entitled to a
4 credit equal to ten percent of their purchases of services covered by Sections 251(b) and (c) of the
5 1996 Act made during the time period January 1, 2001 through June 30, 2002. Qwest will issue the
6 credits to Eligible CLECs within 180 days of the Commission's Decision approving the Settlement.
7 The credit is based upon provisions contained in agreements entered into between Qwest and
8 McLeod and Qwest and Eschelon which were the subject of the Section 252(e) proceeding.
9 Wholesale services covered by Section 251(b) and (c) include Unbundled Network Elements
10 ("UNEs"), resale services and charges for collocation. Intrastate access, interstate access, switched
11 access, special access, and private line services are not covered by Section 251(b) and (c) of the 1996
12 Act, and not subject to the discount credit provisions of Section 3. The amount of the aggregate
13 Discount Credits will not exceed \$8,910,000 nor be less than \$8,100,000. If the aggregate Discount
14 Credits are less than \$8.1 million, Qwest will contribute the difference as an additional Voluntary
15 Contribution under Section 2. If the aggregate claims for Discount Credits are greater than
16 \$8,910,000, Qwest will pro-rate the amount among Eligible CLECs.

17 Section 4 Access Line Credits This Section provides that an Eligible CLEC can obtain
18 credits in the amount of \$2.00 per the average number of UNE-P lines or unbundled loops purchased
19 each month from July 1, 2001 through February 28, 2002, less the amount that the CLEC actually
20 billed Qwest for terminating intraLATA toll during the same period. The minimum amount of the
21 Access Line Credits is \$600,000 and will not exceed \$660,000. If the aggregate amount of Access
22 Line Credits is less than \$600,000, Qwest will make additional Voluntary Contributions equal to the
23 difference between the amount paid and the minimum.

24 Section 5 UNE-P Credits This Section provides that Eligible CLECs can obtain UNE-P
25 Credits in the amount of \$13 per UNE-P line purchased each month from November 1, 2000 to June
26 30, 2001, and \$16 per UNE-P line purchased each month from July 1, 2001 to February 1, 2002, less
27

28 ⁷ Eligible CLECs include all CLECs certified and operating in the State of Arizona between January 1, 2001 through June 30, 2002, with the exception of Eschelon and McLeod and their affiliates.

1 amounts that the CLEC billed interexchange carriers for switched access during those respective
2 periods. To be eligible for the UNE-P Credits, CLECs must submit four pieces of information (i)
3 information regarding the months that the CLEC did not receive accurate daily usage information; (ii)
4 the reasons it believes the information was inaccurate; (iii) the average number of UNE-P lines leased
5 by the CLEC for each relevant month; and (iv) the total amount the CLEC actually billed
6 interexchange carriers for switched access in each relevant month. The minimum amount of UNE-P
7 Credits is \$500,000 and will not exceed \$550,000. Qwest will make additional Voluntary
8 Contributions in the amount of the difference between amounts actually paid for UNE-credits and the
9 minimum.

10 Section 6 Additional Voluntary Contributions Under this Section, to the extent the credits
11 paid by Qwest under Sections 3, 4 and 5 do not equal the set required minimum amounts, Qwest will
12 pay the difference (the minimum amount less the actual amount paid) as additional Voluntary
13 Contributions under Section 2. Qwest may deduct amounts attributable to Eligible CLECs that do
14 not execute a release of all claims against Qwest for a period of one year from the Effective Date.
15 Qwest can also deduct amounts due under Sections 3, 4 and 5 for any individual CLEC which brings
16 a claim against Qwest within one year from the Effective Date.

17 Section 7 Reports on Credits This Section provides that within 240 days from the Effective
18 Date, Qwest shall submit a written report to Staff demonstrating payment of the credits under
19 sections 3 through 5.

20 Section 8 Retention of Independent Monitor Qwest agrees to pay for an independent, third
21 party monitor selected by Staff to conduct an annual review of Qwest's Wholesale Agreement
22 Review Committee for a period of three years. The Wholesale Agreement Review Committee
23 determines which agreements are to be filed with the Commission to comply with the 1996 Act and
24 the FCC standards.

25 Section 9 Compliance Training Qwest agrees to continue for three years its internal web-
26 based Compliance Training Program which addresses compliance with Section 252(e).

27 Section 10 Opt-in For Eligible CLECs This Section provides that CLECs can opt into the
28 non-monetary terms of certain un-filed agreements designated by Staff. In exercising this opt-in

1 right, the CLEC must satisfy the criteria under Section 252(i), including but not limited to, assuming
2 any and all related terms in the agreement.

3 Section 11 Withdrawal of Federal Appeal Qwest agrees to dismiss its pending United States
4 District Court appeal of the Commission's final Order, Decision No. 64922, in the Wholesale Pricing
5 Proceeding, Docket No. T-00000A-00-0194, now pending in the US District Court for the District of
6 Arizona (Case No. CIV 02-1626).

7 Section 12 Retention of Consultant For Implementation of Wholesale Rates This Section
8 requires Qwest to pay for an independent consultant to provide independent assessments to the
9 Commission of improvements made to automate Qwest's wholesale rate implementation process.
10 The consultant will be hired within 90 days of the Effective Date of Commission approval and will be
11 retained for three years. Staff, with input from Qwest and other parties, will determine the scope of
12 the consultant's work.

13 Section 13 Cost Docket Governance Team This Section provides that the Qwest Docket
14 Governance Team will continue for a period of three years from the Effective Date. This team is
15 comprised of executive level personnel from organizations within Qwest with primary involvement
16 and responsibility for wholesale cost docket implementation in Arizona. The purpose of the team is
17 to provide both an oversight role and to serve as an escalation point for issues or obstacles that may
18 arise during the implementation process.

19 Section 14 Notification of Wholesale Rate Changes To Commission and CLECs In this
20 Section, Qwest agrees to provide prompt written notice of the status and time frames of wholesale
21 rate implementation to the Commission and the CLECs.

22 Section 15 Wholesale Rate Implementation This Section requires Qwest to implement new
23 rates within 60 days of the issuance of a Commission Decision that includes the final price list.
24 Qwest shall file its initial compliance filing including a numeric price list within 14 days of a
25 Recommended Opinion and Order.

26 Section 16 Filing of Settlement Agreements In this Section, Qwest agrees to file with the
27 Commission any settlement agreements entered into in Commission dockets of general application
28 within 10 days of execution.

1 appeal by Qwest of the Commission's final Decision in the Wholesale Cost Docket.

2 RUCO, AT&T, ADI, MTI and Time Warner participated in the hearing on the Settlement
3 Agreement. They each opposed the Settlement, raising arguments that certain provisions are anti-
4 competitive, unfair, unlawful, overly complicated and not a sufficient deterrent of future wrong-
5 doing.

6 **Issue: The Negotiating Process**

7 The CLECs and RUCO criticized the negotiation process between Staff and Qwest that lead
8 to the Settlement Agreement because it excluded all other parties from the talks until after Staff and
9 Qwest had agreed to the principles of the agreement. After Staff and Qwest sought input from other
10 parties, RUCO and the CLECs claim Staff and Qwest did not meaningfully modify the agreement
11 based on criticisms. Both Time Warner and AT&T claim that Staff did not comply with Commission
12 policy to file notice of settlement discussions three days prior to engaging in settlement talks.

13 In addition, the CLECs in particular, take issue with Staff's view that the underlying dockets
14 are not about CLECs or CLEC assertions of economic harm, but rather about Qwest and its
15 inappropriate behavior. They do not believe Staff adequately considered the CLEC position in
16 negotiating the Settlement. The CLECs believe that Qwest's illegal behavior harmed competitors
17 and competition, and the Agreement should either compensate CLECs more or make it easier for
18 CLECs to obtain the benefits of the credits.

19 Staff defends the process that resulted in the Settlement. Staff claims critics give no weight to
20 the fact the underlying dockets are all enforcement dockets initiated by Staff or the Commission
21 against Qwest, and thus, it was not unusual for Qwest to approach Staff, and for these two parties to
22 have initial discussions to determine if settlement were possible. Staff denies that CLECs were
23 denied an opportunity to meaningfully participate in crafting the Settlement. Staff states that if it was
24 presented with a compelling argument regarding the need to change a Settlement principle, Staff
25 would have pursued the issue with Qwest.

26 Staff states that if these cases had been about actual CLEC compensatory damages claims,
27 then the CLECs would have had to establish their damages with certainty. Staff recognizes that
28 CLECs were disadvantaged or discriminated against as a result of Qwest's conduct, thus Staff

1 included penalties to benefit CLECs in the 252(e) and Wholesale Billing OSC dockets, but Staff
2 claims in settling these dockets with Qwest it is not required to adopt a penalty designed to redress
3 any and all alleged CLEC harm.

4 Staff states that the Commission's current policy regarding providing notice of settlement
5 discussions, adopted at its February 8, 2001 Open Meeting, does not apply to enforcement dockets,
6 but only to large rate cases and merger dockets. Staff argues there are valid reasons to distinguish
7 rate cases from enforcement dockets. In rate cases, intervenors often have a direct economic stake in
8 the outcome, but that direct interest often is not present in enforcement dockets. A requirement that
9 Staff may not talk to any respondent without notifying and involving all intervenors may not be
10 productive or desirable in every enforcement action as it may chill settlement discussions and serve
11 no legitimate purpose. Staff believes that even in large rate cases and mergers, some discretion must
12 be left with Staff to determine how best to effectuate the policy.

13 **Issue: Aggregate Value of Settlement and Overall Amount of Penalties**

14 AT&T believes that the penalties provided for in the Settlement Agreement are inadequate.
15 Staff originally recommended aggregate penalties for the three underlying dockets totaling
16 \$22,651,000. (\$15,047,000 in the 252(e), \$7,415,000 in the 271 sub-docket and \$189,000 in the
17 Show Cause proceeding). AT&T argues that the total cash payment to the General Fund as
18 contemplated under the Settlement Agreement, only one quarter of Staff's original recommended
19 penalties, is inadequate. Moreover, AT&T believes that based on the evidence of the intentional and
20 egregious nature of Qwest's conduct, Staff's recommendations were too low in the underlying
21 dockets.

22 Staff believes that a Settlement with a value of over \$20 million is more than adequate. Staff
23 also believes that the non-monetary provisions of the Settlement provide significant benefits to
24 consumers, CLECs and the public. According to Staff, the fact that consumers and CLECs will
25 receive the benefits of the Settlement immediately, rather than after years of litigation, weigh in favor
26 of approval.

27 Staff argues that the focus of the underlying Enforcement Dockets has been on Qwest's
28 conduct and not upon the identification and remedy of individual CLEC harm or economic damages.

1 Staff argues that identifying individual CLEC harm, or damages or competitive harm is not within the
2 scope of the underlying proceedings and would not be possible with any precision.

3 Staff believes that the Settlement Agreement is a critical component in restoring the integrity
4 of the Commission's processes and should be considered in conjunction with important measures
5 already taken by the Commission, including the Commission's holding Qwest's Section 271
6 application in abeyance pending its investigation into the un-filed agreements, and conducting a
7 Supplemental Workshop in July, 2002 that allowed CLECs who believed they had been precluded
8 from participating in the Section 271 process to put their issues into the record for Commission
9 resolution.

10 Qwest argues that the Commission's ability to impose criminal contempt penalties in the
11 underlying dockets is in doubt, and moreover, that the Commission does not have the ability to
12 impose fines on a daily basis in any event under A.R.S. § 40-424.

13 **Issue: Voluntary Contributions**

14 Time Warner questions the legality of the "Voluntary Contributions" under Section 2 of the
15 Settlement because it is unclear whether the Commission has the constitutional or statutory authority
16 to assess a penalty and use the proceeds to fund yet-to-be-identified projects. The Arizona
17 Constitution specifies that civil penalties are to be paid into the state's general fund, unless otherwise
18 provided by statute. If the \$6 million to be set aside for "Voluntary Contributions" is in reality a
19 redirected penalty, Time Warner asserts, the Commission is exceeding its authority as it has no
20 constitutional authority to divert penalty payments from the general fund. In addition, because the
21 Commission has no authority to appropriate money directly, the Settlement arguably contemplates a
22 direct appropriation by the Commission of public funds.

23 AT&T criticizes the Voluntary Contributions as artificially inflating the value of the
24 settlement and giving Qwest credit for legal obligations it already has, or forces new obligations on
25 Qwest that are unrelated to the issues raised in these proceedings. AT&T argues that if the
26 Commission believes that education, economic development or infrastructure investment is
27 necessary, and it has the constitutional and statutory authority to address these issues, it should do so
28 on the record, with an explanation as to why doing so is just, reasonable and in the public interest. If

1 Qwest has legal obligations to serve unserved or underserved areas, the Commission should initiate a
2 show cause proceeding to determine why Qwest is not serving such areas. AT&T argues Staff should
3 not be using these proceedings to force Qwest to serve areas it has no legal obligation to serve.

4 Several parties note that as a result of the Voluntary Contributions, Qwest will own and
5 operate and earn a return on any investment in facilities in unserved areas, and that Qwest would
6 receive goodwill and tax deductions from any charitable contributions. AT&T argues that these are
7 not penalties. RUCO, too, argues that the proposed penalty is not representative of the actual amount
8 that Qwest will be penalized if it is allowed to earn a return on investments made from the voluntary
9 contributions. RUCO recommends that Qwest not be able to earn a return on its "Voluntary
10 Contributions."

11 AT&T argues that because Qwest testified it will not have a construction budget for 2004
12 until December 2003 or January 2004, and Qwest can easily manipulate the budget on the
13 expectation that the Voluntary Contributions in the Settlement Agreement will be approved. Thus,
14 there will be no way for Staff to prove that Qwest omitted a planned investment it later submits for
15 consideration as a Voluntary Contribution.

16 AT&T further argues the Voluntary Contributions do not promote the benefits of competition
17 of consumer choice and lower rates. AT&T argues the investment contemplated under the Settlement
18 will serve only a limited number of consumers, not the service territory as a whole. Furthermore, to
19 the extent future investments are contemplated to involve broadband, current federal rules do not
20 require Qwest to provide CLECs access to that portion of its network.

21 RUCO believes that Qwest has made promises in the past that it would make additional
22 investment in underserved areas, and that Qwest is not promising anything new under the Settlement.
23 Because of past promises, RUCO recommends that Qwest be required to commit to an acceptable
24 timetable when broadband services will be available in the underserved areas.

25 Staff argues that the Voluntary Contributions required under the Settlement Agreement are
26 lawful and in the public interest. The \$6 million associated with Section 2 is not in the form of
27 monetary payments being made to the Commission or CLECs. Staff asserts that the funds to be paid
28 under Section 2 for infrastructure and educational programs, unlike Sections 1, 3, 4 and 5 do not

1 involve any monetary payments or credits. Staff believes another important distinction is that Qwest
2 is making these contributions and investments voluntarily to benefit consumers. Staff asserts the
3 Voluntary Contributions are not a direct appropriation of public funds by the Commission, as the
4 Commission receives no funds under the Settlement, and if it receives nothing under the Settlement
5 Agreement, it has nothing to appropriate.

6 Qwest notes that Time Warner's identification of potential problems with the legality of the
7 Voluntary Contributions is "tentative." Qwest argues that neither Time Warner nor case law suggests
8 that there is any basis for concluding that the Voluntary Contributions in this case could be
9 considered an "appropriation" from the treasury. Qwest argues that the Voluntary Contributions
10 cannot reasonably be considered penalty payments when no penalty has been assessed and no
11 findings of fact nor conclusions of law have been made upon which the penalty could be based.
12 Qwest says that the Settlement includes the maximum cash payment on which the parties could reach
13 agreement, and there is no basis to conclude the Voluntary Contributions are redirected penalty
14 payments. Qwest states its willingness to fund the projects contemplated under Section 2 is no more
15 a redirected penalty than Qwest's willingness to fund the independent monitor provided for in
16 Section 8 or the consultant provided for in Section 12.

17 Staff argues that the Voluntary Contributions provide direct benefit, through infrastructure
18 investments and educational projects, to consumers who were adversely affected by Qwest's conduct.
19 According to Staff, criticism of the Voluntary Contributions on the grounds that Qwest would benefit
20 from certain contributions or investments is not well-founded because the Settlement is silent on rate
21 base treatment. Staff emphasizes that it is up to the Commission to determine how the investments
22 will be dealt with for rate base and rate case purposes. Qwest argues that in allocating the Voluntary
23 Contributions, the Commission is able to weigh the benefits to ratepayers with any potential public
24 relations or tax benefits to Qwest, and that Staff is capable of monitoring Qwest's compliance.
25 Furthermore, to the extent Qwest's revenue is likely to be determined by its rate base, the allowable
26 return is largely within the Commission's discretion.

27

28

1 **Issue: Finding of wrong-doing**

2 RUCO argues that monetary penalties are not sufficient to deter Qwest from future wrong-
3 doing. Based on past experience, RUCO believes that the Company considers regulatory fines as a
4 cost of doing business. In this case, RUCO believes that a large fine would only have a minimal
5 impact and not deter Qwest from engaging in similar behavior. RUCO advocates that the
6 Commission hold Qwest accountable for its conduct by making findings that Qwest acted illegally.

7 RUCO argues that findings of wrong-doing are necessary to restore the integrity of the
8 Commission's process. RUCO argues that the Settlement leaves the public with the impression that
9 the Commission is more interested in the money than in defending its process and deterring future
10 conduct. RUCO believes that without findings of wrongdoing and an Order proscribing such
11 conduct, it will be difficult for the Commission to enforce future unlawful conduct. RUCO argues
12 that an Order that adopts the Settlement would only allow the Commission to invoke its contempt
13 powers for failing to comply with the Settlement's explicit requirements, but findings that Qwest
14 acted illegally and interfered with and obstructed its process would be the basis for the Commission
15 to order Qwest to cease such conduct. Specifically, RUCO recommends that any Order approving
16 the Settlement include Conclusions of Law finding that Qwest's failure to file interconnection
17 agreements between Qwest and McLeod and Qwest and Eschelon violated 47 U.S.C. § 252(e) and
18 A.A.C. R-14-2-1112, and that Qwest engaged in a practice of discriminatory conduct in violation of
19 A.R.S. §§ 13-1210, 13-1211 and 40-203. RUCO also recommends that the Commission make
20 findings that Eschelon and McLeod engaged in a scheme with Qwest to defraud this Commission, the
21 public and other CLECs.

22 In addition, RUCO recommends that the Commission specifically order Qwest to cease
23 engaging in discriminatory conduct and cease scheming to defraud the Commission. Such a finding
24 would also prevent Qwest from arguing in future proceedings before this Commission that there was
25 never a finding of wrong-doing. It also would send the message that wrong-doers can not buy their
26 way out of difficulties.

27 Staff argues that the Settlement Agreement, without a finding of wrongdoing, does not
28 adversely affect the Commission's ability to invoke its contempt powers for any violation under

1 A.R.S. § 40-424. Staff points to the fourth clause of the Settlement which contains an
2 acknowledgement by Qwest that violations of the Commission's Order approving the Settlement may
3 be punished by contempt after notice and hearing.

4 Qwest argues that RUCO fails to explain how a finding of wrongdoing would enhance the
5 Commission's civil contempt power and fails to cite any legal authority that would provide
6 clarification. Qwest asserts that RUCO fundamentally misconceives the nature of the contempt
7 power. Qwest argues that in order to be enforceable by contempt an order must be directed at
8 specific and definite conduct. Qwest asserts the language of the Settlement Agreement sufficiently
9 specifies and defines such conduct. Qwest argues the Commission's civil contempt authority is
10 significantly narrower than the Commission's general enforcement power, and the findings RUCO
11 seeks would do nothing to change that.

12 **Issue: CLEC Credits**

13 The CLECS and RUCO argue that the provision of the Settlement Agreement offering credits
14 to CLECs do not adequately resolve CLEC claims of harm and, contrary to their intent, would lead to
15 additional litigation.

16 **Uncertainty Resulting from Credits**

17 AT&T asserts that although Staff and Qwest may have obtained some certainty as a result of
18 the Settlement, the CLECs have not, and are faced with having to file complaints with the
19 Commission to settle their claims.

20 ADI argues that the proposed Settlement, with all its qualifying circumstances and other
21 issues of proof, leaves the CLECs unsure of what compensation or eligibility may be disputed by
22 Qwest, and that such uncertainty would lead to more disputes and hearings. Moreover, ADI states
23 that the smaller CLECs were the most directly hurt by Qwest's anti-competitive conduct and are the
24 least likely to be able to afford litigation post-settlement.

25 ADI advocates the elimination of the caps on the CLEC credits. ADI notes that the CLECs
26 do not have access to any data confirming the total amount of claims, as only Qwest has this
27 information, but CLECs are taking all the risk that Qwest underestimated the amounts. If the
28 maximums are eliminated, ADI argues, CLECs can evaluate the amount of the settlement based on

1 their knowledge of their own claims, without having to weigh the unknown risk that other CLECs
2 claims may cause their own claims to be discounted. ADI asserts that Qwest should bear the risk that
3 it has underestimated the credits, not CLECs.

4 **Scope of Services Included in Discount Credits**

5 CLECs believe that fairly recompensing CLECs for harm caused by Qwest has been, and
6 should be, a central concern of the Commission in these dockets.

7 Time Warner and AT&T complain that the 10 percent discount proposed on Section 251(b)
8 and (c) services does not include all the services on which Eschelon and McLeod received discounts.
9 They along with RUCO believe the Discount Credit should be expanded to include, at a minimum,
10 intrastate services. (RUCO advocates including purchases of both intrastate and interstate services.)
11 Eschelon and McLeod received discounts on Section 251(b) and (c) services, intrastate and interstate
12 switched access, special access and private line, and all other services Eschelon and McLeod
13 purchased from Qwest. The CLECs claim there is no reason to limit the remedy and scope of the
14 discount that the other CLECs would receive. Since not all CLECs purchase the same services or
15 have the same product mix, eliminating certain services will treat all CLECs differently. Thus, as
16 AT&T argues, the remedy as structured is inherently discriminatory. To remedy past discrimination
17 and harm, all services must be included.

18 Time Warner agrees that the effect of limiting the remedy to certain services is enormous for
19 carriers like it. Time Warner competes with Eschelon and McLeod for similar customers. While
20 Eschelon and McLeod were "favored" CLECs, Time Warner claims it lost ground as a competitor.
21 Because Time Warner did not buy a significant volume of Section 251(b) and (c) services during the
22 discount period, Time Warner would receive only \$26,877 under the Settlement, however if Time
23 Warner were given a ten percent discount on all service for the same period, the amount paid by
24 Qwest would be twelve times this much. Time Warner is particularly troubled by the fact that Staff
25 did not analyze how the proposed discounts would affect individual CLECs. Time Warner notes the
26 harm affected all CLECs who purchased services from Qwest, but the remedy benefits only those
27 CLECs who purchased 251(b) and (c) services from Qwest.

28 MTI notes that the minimum amount of \$8,100,000 to be paid in Discount Credits to CLECs

1 may sound like a substantial amount, but that based on the record, it does not appear that Qwest's
2 compensation to Eligible CLECs will be anywhere close to that amount. Although MTI
3 acknowledges that the difference between the amount actually paid to CLECs and the \$8,100,000
4 would be added to the amounts paid as "Voluntary Contributions," amounts Qwest would pay as
5 Voluntary Contributions yield tax benefits and/or revenue-producing infrastructure.

6 Staff argued that the Commission has the authority to include intrastate services, including
7 special and switched access charges and private line services in the 10 percent discount even though
8 they are not 251(b) or (c) services. Staff cautions, however, that the Commission should consider
9 that no party pursued a tariff discrimination claim during the course of this proceeding and Staff is
10 still considering bringing a separate action against Qwest based on illegal discounts on a tariffed rate.

11 Qwest argues that the Settlement Agreement is not discriminatory as all CLECs are treated
12 the same under the credits. The fact that the amount of the credit will vary from CLEC to CLEC is a
13 function of the CLECs' different business models and not an indication that the credit discriminates
14 among carriers.

15 Furthermore, Qwest argues the scope of the discount credits mirrors the litigation which
16 addressed Qwest's compliance with Section 252. The discount credits were crafted to address the
17 alleged harm to CLECs from a Section 251 and 252 perspective. As a result, Qwest states, CLECs
18 will receive differing amounts because the remedy parallels the alleged harm suffered by each
19 specific CLEC. Qwest asserts that if a CLEC did not typically purchase Section 251(b) or (c)
20 services from Qwest, then it was not injured by the conduct at issue in the litigation.

21 According to Qwest, because Section 252(e) does not create a filing obligation for non-252(b)
22 and (c) services, basing the credits on purchases of Section 251 (b) and (c) services alone is
23 appropriate. Qwest argues that whether Eschelon or McLeod may have received a discount for
24 intrastate wholesale purchases from Qwest does not expand the scope of the CLECs' opt-in rights
25 under Section 252. Qwest argues that the Commission does not have jurisdiction to order Qwest to
26 provide discounts on interstate services. Qwest also argues that the Commission cannot order a
27 refund based on non-Section 251(b) and (c) services without violating the filed rate doctrine, which
28 prevents the Commission from retroactively changing a tariffed service, such as switched access

1 rates. Qwest argues that the proper remedy under the filed rate doctrine is to require the carriers
2 receiving the different rates to refund the amounts of the alleged discounts.

3 Similarly, Qwest argues that A.R.S. §40-334 which requires a public service corporation to
4 provide impartial service and rates to all its customers similarly situated does not apply in this case as
5 no CLEC demonstrated in the Section 252(e) hearing that they were similarly situated to Eschelon or
6 McLeod, and thus could not have suffered discrimination under A.R.S. § 40-334 to justify the
7 exclusion of intrastate access in the Discount Credits. Moreover, Qwest argues, the likely remedy for
8 a violation of A.R.S. § 40-334 is not to reproduce the alleged benefit to every customer in the market,
9 but more likely to require Eschelon and McLeod to disgorge any benefits they received that were not
10 available to similarly situated CLECs.

11 AT&T responds that CLECs were not similarly situated as Eschelon and McLeod because
12 Qwest purposely structured the Eschelon and McLeod agreement so other CLECs were not similarly
13 situated. AT&T states the structure was a sham and should be disregarded. AT&T is bothered
14 greatly by Qwest's apparent argument that it can willfully violate federal and state law, prevent
15 CLECs from participating in Commission proceedings and when it gets caught, the Commission
16 cannot structure a remedy to address the harm to other CLECs but must force McLeod and Eschelon
17 to give back the discounts. AT&T notes that courts have the latitude to make exceptions and
18 distinctions to general rules based on unique facts. AT&T argues that assuming for the sake of
19 argument that the filed rate doctrine applies, the facts of this case cry out for a unique remedy.

20 **Retrospective Discount vs Prospective Discount**

21 AT&T argues that the discount should be based both on retrospective and prospective CLEC
22 purchases of services. AT&T argues that although the Commission may not have jurisdiction to
23 include interstate claims in the Discount Credits, it can order retroactive and prospective discount to
24 approximate the harm done to CLECs.

25 Staff and Qwest argue that a prospective discount that does not include Eschelon and McLeod
26 would be discriminatory. If Eschelon and McLeod were included in a prospective discount, the
27 discount would fail to address the alleged harm or level the playing field for other CLECs.

28

1 AT&T's witness recognized the problem with a prospective discount, but recommended that
2 the benefit of having the discount apply to future purchases was important enough to allow Eschelon
3 and McLeod to participate.

4 **Length of Credits**

5 AT&T argues that the credits should be extended for a period of 23 months, the length that
6 the McLeod agreement was in effect. RUCO recommends that the credits apply for a three year
7 period. ADI argues the credits should be extended to the full five-year term of the Eschelon
8 agreement, to allow CLECs to participate in the full economic benefit of Qwest's secret agreements,
9 including early termination payments.

10 Qwest asserts that the Discount Credits are consistent with the scope of the Section 252(e)
11 Docket. Staff argues too that terms for the discounts longer than 18 months (the time that Eschelon
12 and McLeod received the discount) also raises discrimination issues.

13 **Flexibility of Credits**

14 AT&T is concerned about the documentation required from CLECs to make a claim for the
15 Access Line and UNE-P Credits. Because the period subject to recovery is so long ago, retrieval and
16 production of documentation could be difficult. AT&T recommends that the greatest possible
17 flexibility be afforded to CLECs in substantiating the basis for the credits.

18 ADI asserts that there is no practical purpose served by making the CLECs prove to Qwest
19 they had trouble with Daily Usage Files ("DUFs") when Qwest is already aware of and does not deny
20 that it has had trouble providing accurate DUFs to CLECs. ADI argues it is unfair to require CLECs
21 to prove the existence of calls which were not properly recorded at the time by Qwest. ADI believes
22 that the procedures for payments to the CLECs under Sections 3, 4 and 5 of the Settlement should be
23 streamlined and initially based on the numbers Qwest has already generated. ADI recommended that
24 instead of going through CLEC by CLEC and addressing document production, proof and accounting
25 issues one by one, the average payment per line per month made by Qwest to Eschelon should be
26 used as a proxy for the amount of credit owing to each CLEC.

27 ADI also argues that CLEC credits should not be limited to "credits" but should be made as
28 cash payments if the CLEC has insufficient ongoing business to justify the "credit" method of

1 yment. In addition, ADI asserts Qwest should not be allowed to apply the "credits" to an
2 outstanding bill that is the subject of a good faith billing dispute by the CLEC. Furthermore, ADI
3 argues that Qwest should be required to pay pre-and post- judgment interest on the amounts being
4 paid back to CLECs. Finally, ADI advocates that the Settlement contain a dispute resolution clause
5 and consent to jurisdiction provision to minimize future potential litigation with Qwest over whether
6 a claim should be in state court, federal court, the Arizona Corporation Commission or the FCC.
7 ADI believes that the Commission is the proper forum for resolution of any disputes related to the
8 settlement.

9 Qwest is amenable to amending the Agreement consistent with ADI's suggestion to credit
10 CLECs for Access Line and UNE-P Credits based on proxy amounts. Qwest clarifies, however, that
11 a change would apply to all CLECs requesting credits under Sections 4 and 5, and Qwest would
12 agree to offer CLECs a choice between the proxy amounts or the current calculation.
13 Furthermore, to be eligible for the Section 5 Credit, even using the proxy numbers, CLECs must have
14 used UNE-P lines from Qwest for each relevant month and have actually billed interexchange
15 carriers for switched access during the relevant time period. Qwest does not believe that the
16 remainder of ADI's proposed modifications are necessary.

17 **Issue: ADI's claim**

18 ADI advocates that the Commission include in its Order a finding that sets the amount of
19 ADI's claim. ADI states that throughout the process Qwest has been unwilling to commit that ADI is
20 an "Eligible CLEC" or to the amount of ADI's claim under Section 3. To remove that uncertainty,
21 ADI wants the Commission to make a specific finding that ADI, and other CLECs participating in the
22 proceeding are "Eligible CLECs" under the terms of the Settlement. In addition, Qwest has informed
23 ADI that it is eligible for a Section 3 Discount credit of \$319,004. ADI states it does not dispute this
24 amount and thus, it should be included as a specific finding.

25 ADI also desires to opt in to the non-monetary provisions of the Global Crossing agreement
26 and the other agreements that Staff identified that Qwest should have filed pursuant to Section 252(e).
27 ADI wants to opt into the portion of the Global Crossing agreement that rolled back the date of
28 Global Crossing's UNE-P conversion to April 15, 2000. ADI wants to use the earlier UNE-P

1 conversion date for the purpose of calculating the amount of Section 4 and 5 CLEC Credits in the
2 Settlement Agreement.

3 Qwest argues that ADI's attempt to backdoor eligibility for the UNE-P Credits must fail.
4 First, ADI was reselling PAL lines and, as such, was not entitled to convert to UNE-P PAL until the
5 FCC ordered that UNE be used for payphone lines. Second, Section 10 of the Settlement would
6 allow Eligible CLECs to opt into only non-monetary provisions related to Section 251(b) and (c)
7 services, and if opting into a provision would result in any exchange of money, as in the case of
8 ADI's request, such provision would not qualify as "non-monetary" and would not be available for
9 opt-in under Section 10. Third, even if the conversion date and retroactive wholesale pricing were
10 non-monetary, ADI would be eligible to opt-in to that provision only if they satisfied the criteria
11 under Section 252(i) that they must be similarly situated and willing to accept all related terms and
12 conditions. Qwest states that the Global Crossing agreement makes it clear that Global Crossing had
13 submitted to Qwest requests for conversion of its lines to UNE-P and was in dispute with Qwest
14 regarding the proper charges for the lines. Qwest states it does not appear that ADI was in a similar
15 situation at that time. Finally, Qwest argues that even if ADI were to opt into the conversion date in
16 the Global Crossing agreement, it would not be eligible for the UNE-P Credits if it were not actually
17 selling interexchange carriers for switched access during the relevant time period.

18 ADI argues that Qwest's interpretation of Section 10 of the Settlement Agreement is illusory.
19 Moreover, at the hearing, Qwest's witness, Mr. Ziegler, testified that from a business perspective, this
20 provision was non-monetary and subject to opt-in under Section 10 of the Settlement. ADI argues that
21 because all parties operate for economic reasons and motives, it would be very difficult to imagine a
22 situation in that a CLEC might want to opt-in to that wouldn't have a positive economic benefit to the
23 CLEC. Thus, under Qwest's interpretation there would be virtually no terms available for opt-in.
24 ADI disputes, too, Qwest's claims that it did not repeatedly request Qwest to convert its wholesale
25 discount payphone lines to UNE-P provision and that Qwest repeatedly refused and failed to do so.

26 **Release: The Release**

27 CLECs criticized the Release of Claims that Qwest had initially circulated among the parties
28 as being overly broad. AT&T complained that Qwest and Staff limited the Discount Credit to

1 Section 251(b) and (c) services, but Qwest's Release of All Claims required the CLECs to release
2 rest from all intrastate discriminatory and unlawful conduct.

3 ADI argues that the release should be narrowly defined for each of the three credit sections to
4 include only the claims that are the basis of the particular credit and limited to the time periods
5 applicable for each credit section, and the CLEC should only be required to sign-on to a release for
6 particular credit basket for which that CLEC is participating in.

7 Qwest attached a revised draft release to its Opening Brief, which it claims comports with the
8 actual language of the Agreement, and that CLEC criticism of the earlier version does not apply to
9 the revised version. Qwest asserts that the release does not require the CLECs to release any claims
10 they may have relating to the purchase of interstate services.

11 Qwest rejects ADI's suggestion that CLECs should be able to select only part of the credits
12 and execute a more limited release based only on the credits it opts to receive. Qwest argues such
13 suggestion is not reasonable and that CLECs may choose to participate fully in the Settlement or to
14 not participate in the Settlement at all and pursue any claims against Qwest independently. Qwest
15 argues they should not be able to pick and choose among the terms of the Settlement Agreement.
16 Qwest states the revised release is a reasonable quid pro quo in exchange for the credits CLECs are
17 entitled to under the Agreement.

18 AT&T, Time Warner and ADI continue to have concerns about the revised release. AT&T
19 comments that the release should specifically state the CLECs are not releasing any interstate
20 claims for discrimination they may have because of Qwest's agreements with McLeod and Eschelon.
21 In addition, AT&T and Time Warner note the revised release specifically states the CLEC releases all
22 claims for Section 251(b) and (c) services purchased in Arizona and all other intrastate services
23 purchased by the CLEC. The CLECs argue that CLECs should not have to release all intrastate
24 claims to receive payment on their Section 251(b) and (c) claims. ADI argues the claims released
25 should only be those that form the basis of the Sections 3, 4 and 5 credits. Time Warner notes too,
26 that it appears that Staff and Qwest have not reached agreement on a revised release, thus, it is
27 difficult for CLECs to comment on the reasonableness of the release when it is not apparent that the
28 settling parties have agreed upon its terms.

1 ADI is concerned too that if a CLEC does not dispute Qwest's numbers for a Section 3 Credit,
2 but disputes the Section 4 and 5 credit calculations, Qwest should not be able to hold the Section 3
3 credit hostage to the disputes over the other credits. Yet, ADI argues, having a single release for all
4 credits will hold up payment on all credits until all disputes are resolved. Thus, ADI argues, the
5 integration clause that Qwest has proposed which purports to divorce the release document from the
6 context of this global settlement is inappropriate, and is not in the public interest.

7 Analysis and Resolution

8 The Process

9 Generally, this Commission encourages parties to resolve disputes consensually. This policy
10 promotes the public interest as it conserves resources, saves time and can lead to creative solutions
11 that often can maximize the benefits to the public. In the past, where there are multiple parties
12 participating in a docket, the Commission has urged Staff to ensure that any settlement process is as
13 open as possible. Such openness promotes confidence in the process, protects due process and can
14 improve efficiency by considering differing points of view that are best advanced by individual
15 parties. In large rate cases and mergers, the Commission has expressed a policy that Staff should file
16 a notice in the docket at least three days prior to engaging in settlement talks.

17 In this case, Staff and Qwest first engaged in bi-lateral settlement discussions before inviting
18 other parties to participate. Other parties were not excluded, but were invited to the table later.
19 While this approach did not violate any law or Commission rule or policy, it led to much criticism by
20 those parties who were initially excluded from discussions. The negotiating process in this case did
21 not violate any party's rights nor should it invalidate the Agreement, however, allowing intervenor
22 participation at an earlier date would have eliminated the need to address criticisms of the process,
23 and allowed us to focus solely on the merits of the Settlement. Inviting all parties to participate in the
24 settlement discussions from the beginning, may have resulted in a settlement that more than two
25 parties could agree to, and would not necessarily have precluded the Agreement that was eventually
26 reached.

27 We urge Staff and any party to a multi-party proceeding to carefully consider the appearances
28 of propriety when engaging in any settlement discussions. Our policy in large rate cases and mergers

1 is designed to dispel any notions that settlements are the result of closed door secret negotiations. We
2 believe that Staff should consider whether the policy is well-served in other docket types as well.

3 Staff states it did not have an obligation to consider CLEC harm because these were
4 enforcement dockets brought by Staff and not complaints. However, it was AT&T in March 2002
5 that filed a Motion in the Section 271 Docket asking the Commission to investigate Section 252
6 compliance and who in October 2002 wrote to the Commission about Qwest's delay in implementing
7 the new wholesale rates. The record in the Section 252(e) docket shows that throughout that
8 proceeding Staff had advocated remedies that produced benefits to CLECs. Those benefits were the
9 equivalent of a direct economic interest, even if not considered to be monetary penalties, and in this
10 case, it seems reasonable for CLECs to have relied on Staff's recommendations in lieu of bringing
11 their own discrimination cases. In addition to considering the appearance of propriety, Staff should
12 consider the interests of any intervenors in exercising its discretion whether notice of settlement
13 discussions is warranted in a particular case. We do not mean to prevent Staff from one-on-one
14 discussions in any enforcement docket, but merely encourage Staff to consider the appearances of
15 propriety and the interests of any intervenors.

16 **The Settlement Agreement**

17 We find that the proposed Settlement Agreement is not a fair and reasonable resolution of the
18 issues raised in the three dockets and is not in the public interest. The reasonableness of the
19 Settlement should be measured against all of the evidence in the record. The Commission has
20 completed hearings and post-hearing briefing in two of the three underlying dockets. The third (the
21 Section 271 Sub-docket) involves the same facts as the Section 252 investigation, however, the
22 Commission has not held hearings on the allegations contained in the Staff Report because Staff and
23 Qwest reached their agreement before a hearing had been set, and Qwest withdrew its request for a
24 hearing pending the outcome of the Commission's consideration of the Settlement Agreement.

25 The record in the Section 252(e) docket supports a finding that Qwest violated Section 252(e)
26 of the 1996 Act, R14-2-1307, R14-2-1506 and R14-2-1508 when it failed to file the 28 agreements
27 listed on Exhibit B and the 14 agreements it filed in September 2002 and which were approved in
28 Decision 65745. These agreements contain on-going obligations related to Section 251 (b) and (c)

1 services. We are not persuaded by Qwest's arguments that the agreements did not have to be filed
2 because they have been terminated, are form contracts, or did not involve Section 251(b) or (c)
3 services. We agree with Staff that "form" contracts that contain terms and conditions not contained
4 in the interconnection agreement do not fall under the FCC's exemption of form contracts from the
5 filing requirements. (Staff's Initial Brief in Section 252 proceeding at p.10-11) We also find that
6 provisions related to reciprocal compensation arrangements, operator services, directory services and
7 ICNAM services are Section 251(b) and (c) services. (Id. at 12-13) In addition, we concur with
8 Staff's position that agreements relating to Section 251 (b) and (c) services, that are later formalized
9 or superceded by other agreements should be filed if they are not superceded within the filing
10 deadline. Id. at p.14.

11 Furthermore, the evidence shows that Qwest intentionally and willfully violated Section
12 252(e) of the 1996 Act, A.R.S. § 40-203, 40-334 and 40-374, and A.A.C. R14-2-1112, R14-2-1307,
13 R14-2-1506 and R14-2-1508 when it entered into, and failed to file, agreements with Eschelon and
14 McLeod that gave these CLECs discounts off all their purchases from Qwest, including Section
15 251(b) and (c) services, as well providing these CLECs with escalation procedures not granted to
16 other carriers.

17 The evidence shows that the agreements with Eschelon for consulting services and with
18 McLeod for purchases which Qwest claims were not subject to Section 252 requirements, were
19 shams designed to hide the true nature of the agreements. Qwest argues that its accounting treatment
20 of the payments to McLeod and Eschelon are consistent with purchase contracts rather than
21 discounts. We find that Qwest's accounting treatment is not conclusive as to the true nature of the
22 agreement and that the preponderance of the evidence indicates that indeed the agreements under
23 which Qwest purchased services or products from McLeod or Eschelon were calculated attempts to
24 provide favorable pricing on the UNE-Star product. (RUCO Initial Section 252 Brief at pp 27-39)

25 The evidence indicates that Qwest did not want the McLeod "discount" to appear in an
26 agreement that would have to be filed with a state commission and become public. By filing the
27 Fourth Amendment to the McLeod Interconnection Agreement which indicated a price for the UNE-
28 M conversion, but not including all of the terms of the conversion to UNE-M, Qwest made the UNE-

1 Star product appear more expensive than it had actually been for McLeod. The public version of the
2 UNE-Star agreement states that McLeod had to pay \$40 million to Qwest to convert to UNE-Star,
3 while un-filed agreements show that Qwest gave back much of that amount to McLeod.

4 Likewise, the consulting agreement with Eschelon was a sham arrangement designed to hide
5 the true purpose of the discount. The 10 percent discount was not tied to the amount of consulting
6 services that Eschelon was to provide, but rather was based on the amount of Eschelon purchases.
7 Eschelon could provide no consulting services and still receive a 10 percent discount on Section 251
8 services. Moreover, if Eschelon did not meet its minimum take-or-pay commitment, then all of the
9 discount would return to Qwest regardless of how much consulting Eschelon performed for Qwest.
10 Furthermore, there is no evidence of documents supporting the assertion that Eschelon provided
11 consulting services under the agreement. In a letter dated May 15, 2002 to the Minneapolis Office of
12 Administrative Hearings, Eschelon states that Qwest treated the consulting agreement as a "sham
13 almost immediately." Richard Smith, Eschelon's president, stated that the idea that Eschelon could
14 provide consulting services was an afterthought, as a mechanism to bring down the cost of the UNE-
15 Star product and that Qwest did not take offered consulting services. Mr. Smith stated that Qwest
16 was concerned that other CLECs would attempt to opt into the lower (i.e. discounted) UNE-Star
17 prices. (RUCO Initial Section 252 Brief at p 41-48)

18 The preponderance of evidence in the OSC proceeding supports a finding that Decision No.
19 64299 required Qwest to implement the wholesale rates approved in that Decision within a
20 reasonable amount of time, and that by not implementing the rates until December 15, 2002, and not
21 notifying the Commission or CLECs of the delay in implementation, Qwest violated the
22 Commission's Decision.

23 At the April 21, 2004 Open Meeting, Qwest withdrew its request for a hearing in the Section
24 271 Sub-docket. The underlying facts relevant to the Section 271 Sub-docket are essentially the
25 same as those in the Section 252(e) docket. The record in the Section 271 Sub-docket supports a
26 finding that by including non-participation clauses in its agreements with certain CLECs, Qwest
27 interfered in the Section 271 regulatory process. The FCC's Section 271 rules of process rely on the
28 state commissions' development of a comprehensive record. Throughout the Section 271 process

1 this Commission has attempted, through the workshop process and procedures established to resolved
2 disputed issues, to create an open, collaborative process in order to develop as complete a record as
3 possible. Commission Rules of Procedure, R14-3-104 provides for parties to enter appearances at
4 hearings, introduce evidence, examine and cross-examine witnesses and generally participate in the
5 proceeding. Preventing contracting parties from participating in Commission investigations or from
6 bringing their relevant concerns about Qwest's conduct to the attention of the Commission, harms the
7 regulatory process by diminishing the effectiveness of the Commission. The fact that the CLECs
8 involved in the agreements with Qwest entered them willingly does not alter the finding that such
9 non-participation provisions violate federal and state processes, are detrimental to the regulatory
10 process, and should not be permitted.

11 Given the extensive record in the three dockets and our conclusions concerning Qwest's
12 culpability, the question becomes does the Settlement Agreement provide a fair and reasonable
13 resolution that is in the public interest. We believe that it does not and do not approve the Settlement
14 Agreement as proposed.

15 One of our primary concerns with the Settlement Agreement is that Voluntary Contributions
16 which provide a substantial portion of the value of the Settlement, are not good public policy and are
17 potentially unlawful under Arizona law. Qwest and Staff tout this Settlement as having a value of
18 over \$20 million. The cost to Qwest, however, will not approach that amount, as a significant portion
19 of the Settlement's value stems from the Voluntary Contributions which yield significant benefits to
20 Qwest. Although we recognize that the Voluntary Contributions may provide benefits to Arizona
21 consumers, Qwest, itself, will derive a significant benefit, either through goodwill and charitable tax
22 deductions or through increased revenue producing assets. Given the nature of Qwest's conduct with
23 respect to the Eschelon and McLeod agreements, such result is perverse. Under the terms of the
24 Settlement Agreement, at least half, and probably more, of the cost to Qwest under this Settlement
25 would be in the form of Voluntary Contributions. We do not believe that it is appropriate that Qwest
26 should be rewarded with community goodwill, tax benefits and revenue producing investment as a
27 result of its conduct in these cases.

28 Moreover, given our findings of culpability in these dockets, it appears disingenuous to claim

1 that the Voluntary Contributions are not re-directed penalties. Qwest would not be making these
2 contributions or investments absent the allegations raised in these dockets. The Settlement calls for
3 the Commission to approve the contributions and investments which is further indication that they are
4 not truly voluntary. It is not good public policy to allow Qwest to buy its way out of a finding that it
5 violated state and federal statutes, regulations and orders by making self-serving investments and
6 contributions.

7 We appreciate Staff's creative approach to devising a way to meet concerns that
8 telecommunication investment in parts of the state are lacking and to promote consumer awareness of
9 competition in the telecommunications market, however, after careful consideration of all the issues
10 in these matters, we do not believe this is the appropriate docket to address Qwest's infrastructure
11 investments. We have concerns that our approval of infrastructure investment may have anti-
12 competitive results. Approving Qwest investments in unserved and underserved areas or for
13 unregulated services, increases Qwest's position in these markets to the potential ultimate detriment
14 of competition. We acknowledge that it is possible there are investments that the Commission could
15 approve that would not favor Qwest over its competitors, but the record does not provide sufficient
16 information to determine what investments or contributions would be fair and appropriate in advance
17 of knowing what projects may be proposed. In addition, we are concerned that it will be difficult to
18 determine if the investments would not have been made in any case, and we can envision disputes
19 arising involving interested parties over which projects or contributions are appropriate.

20 **Monetary Penalties**

21 Prior to the Settlement Agreement, Staff advocated penalties of over \$15 million⁹ in the
22 Section 252 docket, \$7.4 million in the Section 271 Sub-docket, and \$189,000 in the OSC. In each of
23 these dockets Staff believed it was important to assess substantial penalties against Qwest because of
24 the egregious nature of Qwest's conduct and to ensure that Qwest would comply in the future.

25 We believe that based on the records in the underlying dockets, administrative penalties in the
26 amount of \$8,764,000 for Qwest's intentional willful violation of Section 252(e), Arizona law and its

27 _____
28 ⁹ The penalties in the Section 252(e) docket were in addition to Staff's recommended non-monetary penalties that Qwest provide discounts to CLECs.

1 interference with the Section 271 regulatory process, is appropriate. Qwest's conduct of prohibiting
 2 CLECS from participating in the Section 271 proceedings and of failing to provide the Commission
 3 complete information when requesting approval of Interconnection Agreements shows contempt on
 4 Qwest's part.¹⁰ Our finding is well within the range of penalties Staff recommended for each of these
 5 dockets.¹¹

6 In addition to the penalties for its intentional and willful violation of Section 252, Arizona law
 7 and Commission rules related to the Eschelon and McLeod agreements, Staff recommended penalties
 8 totaling \$47,000 based on A.R.S. §40-425 for Qwest's failure to file 23 agreements with carriers
 9 other than Eschelon and McLeod. We concur with Staff that Qwest should have filed these
 10 agreements, that this obligation arises directly from the language of Section 252 and that Qwest
 11 should have known it was obligated to file them. Because unlike the case with the Eschelon and
 12 McLeod agreements, the failure to file appears to be a result of a misunderstanding of the
 13 requirements of Section 252 rather than a willful attempt to avoid the filing requirements, Staff's
 14 recommended penalties of \$47,000 are reasonable and should be adopted.

15 In the OSC docket, pursuant to A.R.S. § 40-424, Staff recommended fines of \$750.00 per day
 16 for Qwest's failure to notify the Commission of its rate implementation delay and failure to obtain
 17 approval of the delay; and \$750 per day for its unreasonable prioritization of states ahead of Arizona.
 18 Staff's recommended fines totaled \$189,000, based on a total of 126 days. We find that Staff's
 19 recommended penalties in that docket are reasonable and should be adopted.

20 We recognize that in the OSC and Section 271 Sub-docket, Qwest challenged the ability of
 21 the Commission to impose fines on a "per-day" basis under A.R.S. § 40-424.¹² Qwest argues that
 22 because A.R.S. § 40-424 does not explicitly provide for per-day penalties, such power cannot be

23 ¹⁰ After October 26, 2000, Qwest submitted Interconnection Agreements or amendments for McLeod, which the
 24 Commission approved in Decision Nos. 63248 (December 14, 2000) and 63335 (February 2, 2001). Qwest did not
 25 disclose the existence or terms of the un-filed agreements with McLeod. Qwest's deliberate failure to file or notify the
 Commission of the terms of the "secret agreements" when it sought approval of its interconnection agreements and
 amendments calls into question the Commission's ability to rely on information provided by Qwest.

26 ¹¹ In the Section 271 Sub-docket, Staff determined that under A.R.S. §40-424, the Commission could impose a penalty
 27 between \$148,300 and \$7,415,000. Staff recommended the maximum amount of penalties in the Section 271 Sub-docket.
 In the Section 252 docket pursuant to A.R.S. § 40-424, Staff calculated the Commission could impose a penalty between
 \$884,800 and \$44,240,000. Staff recommended a penalty of \$15,000,000.

28 ¹² Qwest did not raise this argument in the Section 252 proceeding.

1 inferred. Qwest also argues the Arizona Constitution does not grant the Commission the authority to
2 impose per-day penalties. Finally, Qwest relies on the legislative history of A.R.S. § 40-425, in which
3 the legislature revised the statute to specifically eliminate the reference to allowing violations that
4 continue from day to day to be deemed separate and distinct offenses. Qwest argues the history of
5 A.R.S. § 40-425 shows that the Arizona legislature deliberately omitted the authority to assess day-
6 to-day penalties when it adopted A.R.S. § 40-424 because it included that ability in A.R.S. §40-425.

7 Article 15, Section 16 of the Arizona Constitution provides that:

8
9 If any public service corporation shall violate any of the rules, regulations,
10 orders, or decisions of the Corporation Commission such corporation shall
11 forfeit and pay to the State not less than one hundred nor more than five
12 thousand dollars *for each such violation*, to be recovered before any court
13 of competent jurisdiction. (emphasis added)

14 Qwest would have us read the italicized words of Section 16 as precluding a finding that each day a
15 violation is outstanding constitutes a separate violation. The language of Article 15, Section 16 is
16 not as restrictive as Qwest argues. It does not preclude finding that a separate violation can occur for
17 each day the corporation is not in compliance with a rule, regulation or order of the Commission.
18 Neither do we believe that the legislative history of A.R.S. § 40-425 necessarily allows any
19 conclusion to be made about the legislative intent behind A.R.S. § 40-424, the statute at issue here.
20 In any case, our interpretation of A.R.S. § 40-424 has never been overruled. As a practical matter,
21 interpreting the statute as Qwest argues means that once a public service corporation fails to comply
22 with a Commission order or violates a statute, there is no incentive to comply because the greatest a
23 penalty would be is \$5,000 whether the violation lasted one day or one thousand days.

24 By failing to file the Eschelon and McLeod agreements, Qwest denied each of the
25 telecommunication carriers certificated in Arizona at the time an opportunity to opt-into those
26 agreements. As an alternative to imposing penalties for Qwest's violations on a per-day basis under
27 A.R.S. § 40-424, we believe that the Commission has authority to impose penalties based on a
28 finding that Qwest incurred a separate violation for each of the 804 telecommunications carriers
certificated in Arizona at the end of 2000 who were denied an opportunity to opt-in. A.R.S. § 40-425
allows the imposition of fines between \$100 and \$5,000 for each violation, consequently the

1 Commission could impose a penalty between \$80,400 and \$4,020,000, for each of the agreements
2 that it should have filed but didn't. Similarly, when Qwest failed to implement the wholesale rates
3 approved in Decision No. 64922 in a timely fashion, it failed to implement 500 separate UNE rates.
4 Each one of the rates not implemented timely is a separate violation of Qwest's obligation under
5 Decision No. 64922. Thus, pursuant to either A.R.S. §§ 40-425 or 40-424, the Commission could
6 impose penalties between \$50,000 and \$2,500,000 for violating Decision No. 64922. Our imposition
7 of penalties for Qwest's contempt of Commission Orders and rules totaling \$11,236,000 is supported
8 both by imposing a per-day penalty and by imposing a per-violation penalty.

9 **Non-monetary Penalties**

10 We understand and laud Staff's desire to level the competitive playing field and structure a
11 remedy for the damage to competition that resulted from Qwest's secret agreements with Eschelon
12 and McLeod. In the Section 252 proceeding, Staff recommended that Qwest be required to file all
13 terminated agreements and make the terms of those agreements available to CLECs to opt-in to for
14 the same period of time the agreement was in effect with the initial contracting CLEC. CLECs would
15 still be required to accept all legitimately related terms to receive the benefit of the selected terms.
16 We believe Staff's recommendation in the Section 252 proceeding to be a reasonable attempt to
17 remedy the harm caused by Qwest not filing these interconnection agreements.

18 In addition, to rectify the harm to competition caused by Qwest providing discounts to
19 Eschelon and McLeod, Qwest has agreed that Qwest Communications Corporation, Qwest
20 Corporation and their affiliates will provide each CLEC certificated in Arizona during the period
21 January 1, 2001 to June 30, 2002, with a credit. Credits will be determined in accordance with the
22 Attachment A that was filed in this docket on April 19, 2004 (attached hereto as Exhibit C) and as
23 updated by Qwest and approved by Staff. Qwest shall file such an update in this docket within 30
24 days of the effective date of this Decision for Staff review and approval. Upon payment of the
25 credits, a CLEC shall sign an appropriate release. CLECs not executing a release may pursue all
26 other available remedies. The amount of the total CLEC payments discussed in this paragraph should
27 not exceed \$11,650,000 for eligible CLECs.

28 The underlying agreements with Eschelon and McLeod from which these discounts are

1 derived, included unbundled network elements and Section 251(b) and (c) services purchased from
2 Qwest. This Commission does not have jurisdiction to order discounts on interstate services. The
3 Eschelon agreement was in effect from November 15, 2000 to March 2, 2002, a period of 17 months.
4 (Kalleberg Direct, EX, ST-2, p.20) The McLeod agreement was in effect from January 1, 2001 to
5 June 30, 2002, a period of 18 months. (Brotherson Rebuttal, 6:19-25) The discounts we order herein
6 are intended to reflect the period that the Eschelon and McLeod agreements were in effect.

7 Although we are sympathetic to AT&T's argument that prospective credits provide a greater
8 benefit to CLECs, to require Qwest to provide prospective credits to all CLECs except Eschelon and
9 McLeod violates federal and state prohibitions on discriminatory rates. The alternative of requiring
10 prospective rates, but allowing Eschelon and McLeod to participate, is not good public policy as it
11 would allow Eschelon and McLeod to benefit as a result of involvement in illegal activity.

12 Qwest may provide the discounts to CLECs in the form of credits; however, if an eligible
13 CLEC is not longer doing business in Arizona, does not do sufficient business in Arizona to use the
14 credits within six months, or has filed for relief under federal bankruptcy laws since January 1, 2001,
15 Qwest should provide the discount as cash payment.

16 The credits we order herein are intended to rectify the harm to competition in this state that
17 resulted from Qwest's conduct. In addition to the credits, we find that other non-monetary remedies
18 are appropriate to prevent future violations. Consequently, we find that it is reasonable to require the
19 following: 1) Qwest to pay for an independent, third party monitor selected by Staff to conduct an
20 annual review of Qwest's Wholesale Agreement Review Committee for a period of three years; 2)
21 Qwest to continue for three years its internal web-based Compliance Training Program which
22 addresses compliance with Section 252(e); 3) CLECs to be able to opt into the non-monetary terms of
23 the 28 agreements listed in Exhibit B even if these agreements have terminated; 4) Qwest to retain an
24 independent consultant for three years to provide independent assessments to the Commission of
25 improvements made to automate Qwest's wholesale rate implementation process, with input from
26 Staff and other parties to determine the scope of the consultant's work; 5) Qwest to continue its
27 Docket Governance Team for a period of three years; 6) Qwest to provide prompt written notice of
28 the status and time frames of wholesale rate implementation to the Commission and the CLECs; 7)

1 Qwest to implement new rates within 60 days of the issuance of a Commission Decision that includes
2 the final price list; and 8) Qwest to file with the Commission any settlement agreements entered into
3 in Commission dockets of general application within 10 days of execution.¹³

4 **ADI's Claims**

5 Because we are not adopting the Settlement Agreement, we do not make a specific finding of
6 whether ADO qualifies as an Eligible CLEC under the Settlement Agreement. If a CLEC such as
7 ADI was certificated in Arizona at any time during the period January 1, 2001 to June 30, 2002, it
8 would be eligible to receive the discount credits ordered herein.

9 * * * * *

10 Having considered the entire record herein and being fully advised in the premises, the
11 Commission finds, concludes, and orders that:

12 **FINDINGS OF FACT**

13 1. In Decision No. 60218 (May 27, 1997) the Commission opened the Section 271
14 docket and established a process by which Qwest would submit information to the Commission for
15 review and a recommendation to the FCC whether Qwest meets the requirements of Section 271 of
16 the 1996 Act. Section 271 specifies the conditions that must be met in order for the FCC to allow a
17 Bell Operating Company ("BOC"), such as Qwest, to provide in-region interLATA services. Section
18 271(d)(2)(B) requires the FCC to consult with state commissions with respect to the BOC's
19 compliance with the competitive checklist.

20 2. By Procedural Order dated October 1, 1999, the Commission bifurcated its
21 investigation into Qwest's compliance with Section 271 into Operational Support System ("OSS")
22 related elements and non-OSS related elements. In a December 8, 1999 Procedural Order, the
23 Commission instituted a collaborative workshop process to evaluate the non-OSS Checklist Items.
24 Under the procedures of the December 8, 1999 Procedural Order, Staff submitted its report of

25 _____
26 ¹³ A.R.S. §40-423 provides that if a public service corporation acts in a manner declared to be unlawful or forbidden, by
27 the constitution or laws of the state of orders of the Commission, that corporation is liable to the persons affected for all
28 loss, damages or injury. And furthermore, recovery of damages shall not affect a recovery by the state of the penalties
provided pursuant to chapter 40 of the Arizona Revised Statutes or the Commission's exercise of its power to punish for
contempt.

1 findings and conclusions concerning issues raised in the workshops. If there were no disputed issues,
2 Staff submitted its report directly to the Commission, but if disputes remained after the workshop
3 process, the issues were submitted to the Hearing Division for resolution.

4 3. On March 8, 2002, after the Minnesota Department of Commerce raised allegations
5 that Qwest was not complying with its obligation to file interconnection agreements for commission
6 approval pursuant to Section 252(e) of the 1996 Act, AT&T filed a Motion with this Commission in
7 the Section 271 docket asking the Commission to examine Qwest's compliance with Section 252 in
8 the context of the Section 271 investigation.

9 4. By Procedural Order dated April 8, 2002, the Commission opened a separate docket to
10 investigate Qwest's compliance with Section 252 of the 1996 Act.

11 5. On June 7, 2002, Staff filed a Report and Recommendation in the Section 252(e)
12 docket, setting forth the results of its investigation and identifying agreements that it believed should
13 have been filed by Qwest under Section 252(e).

14 6. At a June 19, 2002 Procedural Conference, after hearing additional allegations
15 concerning possible oral agreements, the Commission broadened its investigation into Qwest's
16 Section 252 compliance, and directed Staff to investigate whether the un-filed agreements had tainted
17 the record in the then-on-going investigation into Qwest's compliance with Section 271 of the 1996
18 Act.

19 7. On August 14, 2002, Staff issued a Supplemental Report and Recommendation
20 concerning Qwest's Compliance with Section 252(e). Staff recommended that a hearing should be
21 held to determine whether Qwest acted in contempt of Commission rules by not filing certain
22 agreements with McLeod and Eschelon with the Commission for approval. Staff recommended that
23 issues related to whether the agreements had an adverse affect on the Section 271 investigation be
24 conducted in a Sub-docket of the Section 271 proceeding, and further, that the Section 252(e)
25 proceeding be separated into two phases, with Phase A addressing filing violations and Phase B
26 addressing any opt-in disputes between Qwest and CLECs.

27 8. By Procedural Order dated November 7, 2002, the Commission set the Section 252(e)
28 compliance issues for hearing. In addition, the Commission ordered parties to file comments on

1 Staff's proposed Sub-docket procedures, including the need for a hearing, no later than December 10,
2 2002.

3 9. On December 12, 2002, in Decision No. 65450, the Commission issued an OSC
4 against Qwest. The OSC alleged that Qwest failed to implement the wholesale rate changes ordered
5 in Decision No. 64922 (June 12, 2002) within a reasonable period of time, that Qwest failed to notify
6 the Commission of the rate implementation delay, that Qwest failed to obtain Commission approval
7 of the delay in implementation, and that Qwest's wholesale rate change system is unreasonably slow
8 and inefficient.

9 10. By Procedural Order dated December 20, 2002, all letters, comments and data
10 responses identified in Staff's August 14, 2002 Supplemental Report were made part of the Section
11 271 sub-docket record. Parties were given until January 10, 2003 to submit additional evidence.

12 11. By Procedural Orders dated November 7, 2002, January 3, 2003 and February 11,
13 2003, a schedule for filing testimony was set in the Section 252 proceeding. Qwest, RUCO and Staff
14 filed testimony.

15 12. The hearing on Qwest's compliance with Section 252 commenced on March 17, 2003,
16 and continued through March 20, 2003. Staff, Qwest and RUCO filed testimony in the Section 252
17 hearing. The parties filed Initial Briefs on May 1, 2003, and Reply Briefs on May 15, 2003.

18 13. On May 6, 2003, Staff filed its Report and Recommendation in the Section 271 Sub-
19 docket. Staff identified agreements with four carriers (Z-Tel, Eschelon, McLeod and XO) which
20 prohibited these carriers from participating in Qwest's Section 271 proceeding. Staff recommended
21 penalties of \$7,450,000 as a result of Qwest's intent to interfere with the regulatory process.

22 14. On May 19, 2003, Qwest filed Exceptions to the May 6, 2003 Staff Report and
23 Recommendation and requested a hearing on the penalties proposed by Staff.

24 15. By Procedural Order dated June 19, 2003, the Commission scheduled a Procedural
25 Conference for June 30, 2003 to discuss the nature of further proceedings in the Section 271 sub-
26 docket.

27 16. Pursuant to a March 4, 2003 Procedural Order, the OSC hearing convened on June 13,
28 2003. AT&T, Staff and Qwest submitted testimony pursuant to the schedule set in the March 4, 2003

1 Procedural Order.

2 17. On June 27, 2003, Qwest and Staff filed a Joint Motion to Extend the Time for
3 Procedural Conference, stating they were in the process of negotiating a settlement agreement that
4 involved the 271 Sub-docket. The Hearing Division vacated the procedural conference.

5 18. The parties filed post-hearing briefs in the OSC proceeding on July 15, 2003.

6 19. On July 25, 2003, Qwest and Staff filed a Notice of Filing Settlement Agreement and
7 Request for an Expedited Procedural Conference. The Settlement Agreement purports to resolve all
8 the issues raised in the three above-captioned enforcement dockets involving Qwest. A copy of the
9 Settlement Agreement is attached hereto as Exhibit A, and incorporated herein by reference.

10 20. On July 29, 2003, Qwest and Staff filed a Joint Proposed Procedural Schedule.

11 21. A Procedural Order dated August 7, 2003 consolidated the three cases and reopened
12 their records to consider the Proposed Settlement, established a schedule for testimony concerning
13 the Settlement Agreement, and set the matter for hearing.

14 22. Pursuant to the Procedural Order, Staff and Qwest filed testimony on August 14, 2003;
15 AT&T, RUCO, ADI and MTI filed testimony on August 29, 2003; and Qwest filed rebuttal
16 testimony on September 8, 2003. Pursuant to the terms of the August 7, 2003 Procedural Order,
17 Time Warner and WorldCom filed comments to the Settlement Agreement.

18 23. The hearing on the Settlement Agreement was held on September 16 and 17, 2003.

19 24. The parties filed initial post-hearing briefs on the Settlement on October 15, 2003 and
20 reply briefs on October 29, 2003.

21 25. Section 252(e) of the 1996 Act requires Qwest to file all interconnection agreements
22 with the Commission for approval.

23 26. Section 252(i) of the 1996 Act requires a local exchange carrier to make available any
24 interconnection, service or network element provided under an agreement approved under Section
25 252 to any other telecommunications carrier upon the same terms and conditions as those provided in
26 the agreement.

27 27. A.A.C. R14-2-1112 requires local exchange carriers such as Qwest to provide non-
28 discriminatory interconnection agreements, and which agreements must be filed with the

1 Commission for approval.

2 28. A.A.C. R14-2-1307 provides that local exchange carriers shall make essential facilities
3 or services available under negotiated agreements or an approved statement of terms and conditions
4 which shall be filed with the Commission.

5 29. A.A.C. R14-2-1506 provides that interconnection agreements shall be submitted to the
6 Commission for approval under Section 252(e) of the 1996 Act within 30 calendar days of execution.

7 30. A.A.C R-14-2-1508 provides that any amendments to interconnection agreements
8 shall be filed with the Commission.

9 31. A.R.S. § 40-203 provides that the Commission shall determine and prescribe any
10 rates, charges, classifications, practices or contracts of public service corporations that are unjust,
11 discriminatory, preferential, illegal or insufficient.

12 32. A.R.S. §40-374 requires a public service corporation to charge the rates on file and
13 shall not refund or remit in any manner any part of the rates, nor extend any form of contract or
14 agreement except as offered to all persons and except upon order of the Commission.

15 33. A.R.S. §40-334 prohibits a public service corporation from granting preferences or
16 advantage with respect to rates, charges, service facilities or in any other respect.

17 34. The 28 agreements listed in Exhibit B contain provisions related to on-going
18 obligations concerning resale, UNEs, reciprocal compensation, interconnection and wholesale
19 services in general under Section 251(b) and (c) of the 1996 Act and should have been filed pursuant
20 to Section 252(e) for the reasons set forth in the testimony of Marta Kalleberg in the Section 252(e)
21 proceeding. See Kalleberg testimony in section 252(e) proceeding at pp 25-64.

22 35. Qwest has not filed for Commission approval under Section 252(e) any of the
23 agreements listed on Exhibit B.

24 36. As described herein, Qwest granted Eschelon and McLeod significant concessions to
25 induce them to remain on Qwest's system, including: (1) a 10 percent discount¹⁴ on all the carriers'
26 purchases of Qwest services including, not limited to, Section 251(b) and (c) services, for 5 years in
27

28 ¹⁴ The McLeod agreement provided for a discount of up to 10 percent.

1 Eschelon's case and 3 years in McLeod's case; (2) the creation of the UNE-E and UNE-M product
2 through which Eschelon and McLeod were able to avoid provisioning issues associated with UNE-P;
3 and 3) more favorable escalation procedures, providing for a six-tier escalation process up to and
4 including Qwest's CEO, than available to other carriers.

5 37. Qwest purposely structured the agreements with Eschelon and McLeod to avoid its
6 filing obligations under Section 252(e).

7 38. By intentionally failing to file its agreements with Eschelon and McLeod that gave
8 those two CLECs discounts on all of their purchases, including services specified under Section 251
9 (b) and (c), and which granted escalation procedures and favorable provisioning procedures not given
10 to other carriers, Qwest willfully and intentionally violated the requirements of Section 252 of the
11 1996 Act, A.R.S. §§ 40-203, 40-374, 40-334 and A.A.C R14-2-1112, R14-2-1307, R14-2-1506 and
12 R14-2-1508.

13 39. By providing discounts and escalation procedures to Eschelon and McLeod, Qwest
14 impermissibly discriminated against other CLECs and harmed competition in Arizona.

15 40. In addition to the agreements with Eschelon and McLeod, Qwest entered into and
16 failed to file 11 interconnection agreements with eight other CLECs, as identified in Exhibit B hereto,
17 and 14 other agreements the Commission approved in Decision No. 65475 (December 19, 2002).

18 41. A.A.C. R14-3-104 provides that at a hearing a party shall be entitled to enter an
19 appearance, to introduce evidence, examine and cross-examine witnesses, make arguments, and
20 generally participate in the conduct of the proceeding.

21 42. A.R.S. § 40-249 gives any public service corporation the same privilege to complain
22 as afforded any other party.

23 43. In its Procedural Orders governing the conduct of its Section 271 investigation of
24 Qwest, the Commission established procedures that created an open and fair process, by instituting a
25 collaborative workshop process and establishing procedures for the resolution of disputed items.

26 44. On or around October 26, 2000, McLeod and Qwest orally agreed that McLeod would
27 remain neutral on Qwest's Section 271 application as long as Qwest was in compliance with all their
28 agreements with McLeod and all applicable statutes and regulations. On November 15, 2000, Qwest

1 and Eschelon entered into an agreement that provided during the development of their
2 implementation plan, Eschelon agreed not to oppose Qwest's efforts regarding Section 271 approval
3 or to file complaints before any regulatory body concerning issues arising out of the parties'
4 interconnection agreements. On December 31, 2001, Qwest and XO entered into a Confidential
5 Billing Settlement Agreement in which XO agreed to stipulate that Qwest was in compliance with
6 Section 271 of the 1996 Act. On May 18, 2001, Qwest and Z-Tel entered into a stand-down
7 agreement in which Z-Tel agreed to not participate in Section 271 proceedings for a period of 60 days
8 while Z-Tel and Qwest negotiated interconnection agreements in eight states.

9 45. By entering into interconnection agreements that prohibited these CLECs from
10 participating in Qwest's Section 271 proceeding in Arizona, Qwest undermined the Commission's
11 authority to hear complaints, prevented the Commission from learning about service-related issues
12 these CLECs had with Qwest and interfered with the Commission establishing a complete record in
13 the Section 271 investigation.

14 46. Decision No. 64299, with an effective date of June 12, 2002, required Qwest to
15 implement the wholesale rates approved in that Decision immediately.

16 47. On October 7, 2002, AT&T sent a letter to the Commission expressing concerns about
17 the length of time to implement the lower rates approved in Decision No. 64299.

18 48. Qwest did not implement the rates approved in Decision No. 64299 until December
19 15, 2002, six months after the effective date of Decision No. 64299.

20 49. By not implementing the rates approved in Decision No. 64299 until December 15,
21 2002, and not notifying the Commission or CLECs of the delay in implementation, or requesting an
22 extension of time, Qwest violated the Commission's Decision.

23 50. Qwest's wholesale rate change system in effect at the time of Decision No. 64922 was
24 unreasonably slow and inefficient.

25 51. To prevent future violations it is reasonable to require:

- 26 a. Qwest to pay for an independent, third party monitor selected by Staff to conduct an
27 annual review of Qwest's Wholesale Agreement Review Committee for a period of
28 three years;

1 compliance with Sections 252 and 271 of the 1996 Act, the OSC, and the Settlement Agreement
2 attached hereto as Exhibit A.

3 3. Notice of the proceedings was given in accordance with the law.

4 4. The preponderance of evidence indicates that Qwest violated the provisions of
5 Section 252 of the 1996 Act by entering into the 28 interconnection agreements identified in Exhibit
6 B and the 14 interconnection agreements approved in Decision No. 65745 and not filing these
7 agreements with the Commission for review.

8 5. Qwest's failure to file the agreements discussed herein with Eschelon and McLeod,
9 more specifically identified as agreements nos. 3-10, and nos. 12-16 on Exhibit B, was a willful and
10 intentional violation of Section 252 of the 1996 Act, A.R.S. §§ 40-203, 40-334, 40-374, and A.A.C
11 R14-2-1112, R14-2-1307, R14-2-1506 and R14-2-1508.

12 6. By failing to implement the rates approved in Decision No. 64922 until December 15,
13 2002, and not informing the Commission or CLECs that implementation of the rates would be
14 delayed or requesting an extension time to implement the rates, Qwest violated Decision No. 64922.

15 7. By entering into interconnection agreements that contained provisions that prevented
16 CLECs from participating in the Commission's Section 271 investigation and/or in the Qwest/US
17 WEST merger, Qwest interfered in the regulatory process and violated A.R.S. § 40-249 and
18 Commission Rule R14-2-104 and Commission Procedural Orders in the Section 271 proceeding that
19 established procedures for open and thorough proceedings.

20 8. In light of the record in these matters, the Settlement Agreement is not a fair and
21 reasonable resolution of the issues raised and is not in the public interest.

22 9. The monetary and non-monetary penalties adopted herein are reasonably calculated to
23 penalize Qwest for its violations of federal and state law and Commission rules, regulations and
24 Orders and to deter and prevent such conduct from occurring in the future. At the April 21, 2004
25 Open Meeting, Qwest agreed to the penalty amounts and stated that it would not appeal this Decision.

26 10. At the April 21, 2004 Open Meeting, Qwest agreed to dismiss with prejudice its
27 appeal of the Commission Decision No. 64922 (June 12, 2002) that it filed in the U.S. District Court
28 for the District of Arizona [Case No. CIV 02-01626 (PHX-SRB)] within 30 days of the effective date

1 of this Decision. Qwest also agreed that a hearing in Section 271 Sub-docket was unnecessary.

2 **ORDER**

3 IT IS THEREFORE ORDERED that approval of the Settlement Agreement between Qwest
4 and Commission Staff attached hereto as Exhibit A is denied.

5 IT IS FURTHER ORDERED that Qwest Corporation shall cease and desist from violating
6 Section 252 of the 1996 Act, A.R.S. §§ 40-203, 40-374, 40-334 and A.A.C. R14-2-1112, R14-2-
7 1307, R14-2-1506 and R14-2-1508.

8 IT IS FURTHER ORDERED that pursuant to Article 15, Section 16 of the Arizona
9 Constitution, A.R.S. §§ 40-424 and 40-425, Qwest Corporation shall pay as and for an administrative
10 penalty the sum of \$8,764,000 on account of its intentional and willful violation of Section 252 of the
11 1996 Act, A.R.S. §§ 40-203, 40-374, 40-334 and A.A.C R14-2-1112, R14-2-1307, R14-2-1506 and
12 R14-2-1508, and for its interference with the regulatory process, violation of A.R.S. § 40-249, A.A.C.
13 R14-2-104 and Commission Procedural Orders in the Section 271 proceeding, within 30 days of the
14 effective date of this Decision.

15 IT IS FURTHER ORDERED that in addition to the penalties prescribed above, pursuant to
16 Article 15, Section 16 of the Arizona Constitution, and A.R.S. §§ 40-425, Qwest Corporation shall
17 pay as and for an administrative penalty the sum of \$47,000 for its failure to file for Commission
18 approval the 28 agreements identified in Exhibit B and the 14 agreements approved in Decision No.
19 65745, other than the agreements with Eschelon and McLeod.

20 IT IS FURTHER ORDERED that pursuant to Article 15, Section 16 of the Arizona
21 Constitution, A.R.S. §§ 40-424 and 40-425, in addition to the penalties prescribed hereinabove,
22 Qwest Corporation shall pay as and for an administrative penalty the sum of \$189,000 for its
23 violation of Decision No. 64922.

24 IT IS FURTHER ORDERED that the administrative penalties shall be made payable to the
25 State Treasurer for deposit in the General Fund for the State of Arizona.

26 IT IS FURTHER ORDERED that Qwest shall file with the Commission for its approval the
27 interconnection agreements identified in Exhibit B hereto.

28 IT IS FURTHER ORDERED that the terms of the interconnection agreements ordered to be

1 filed herein as well as those filed for approval in September 2002 and approved in Decision No.
2 65475, shall be available for opt-in upon Commission approval, and that the terms shall be available
3 for the same period of time as they were available to the originally contracting party regardless of
4 whether such agreements are currently in effect.

5 IT IS FURTHER ORDERED that Qwest Corporation shall provide each CLEC, certificated
6 in Arizona at any time during the period January 1, 2001 to June 30, 2002, with a credit from Qwest
7 Communications Corporation, Qwest Corporation, and their affiliates, in an amount to be determined
8 in accordance with the Attachment A that was filed in this docket on April 19, 2004 (attached hereto
9 as Exhibit C) and with Qwest's updated Attachment filed within 30 days of the effective date of this
10 Decision, as approved by Staff. Upon payment of the credits, a CLEC shall sign an appropriate
11 release. CLECs not executing a release may pursue all other available remedies. The amount of the
12 total CLEC payments ordered pursuant to this paragraph shall not exceed \$11,650,000 for eligible
13 CLECs identified by Staff and Qwest Corporation. Qwest Corporation shall not be eligible for the
14 CLEC payment. Eligible CLECs shall not include Eschelon Telecom, Inc., McLeod, Inc., High
15 Performance Communications, and CLECs that have filed for relief under federal bankruptcy laws
16 since January 1, 2001, and have released claims against Qwest. If such eligible CLEC does not
17 currently do sufficient business in Arizona to use its full credit within six months, Qwest Corporation
18 shall make a cash payment to such CLEC for the balance of the credit to which it is entitled. Qwest
19 Corporation shall issue such credits or payments due under this provision to all eligible CLECs
20 within 60 days of the effective date of this Decision.

21 IT IS FURTHER ORDERED that Qwest shall file an updated Attachment A within 30 days
22 of the effective date of this Decision for Staff review and approval.

23 IT IS FURTHER ORDERED that Qwest Corporation shall submit a written report to Staff
24 demonstrating payment to the CLECs within 120 days of the effective date of this Decision. Qwest
25 Corporation shall provide any additional reasonable information requested by Staff in determining
26 that such CLEC payments were issued in a proper and timely manner. Qwest Corporation shall
27 submit CLEC-specific information to Staff.

28 IT IS FURTHER ORDERED that Qwest Corporation shall pay for an independent, third party

1 monitor to be approved by Staff to conduct an annual review of Qwest's Wholesale Agreement
2 Review Committee for a period of three years.

3 IT IS FURTHER ORDERED that Qwest Corporation shall continue for three years its
4 internal web-based Compliance Training Program which addresses compliance with Section 252(e);
5 CLECs to be able to opt into the non-monetary terms of the un-filed interconnection agreements even
6 if these agreements have been terminated.

7 IT IS FURTHER ORDERED that Qwest Corporation shall retain an independent consultant
8 for three years to provide independent assessments to the Commission of improvements made to
9 automate Qwest's wholesale rate implementation process, and that Staff and other interested parties
10 shall have input to determine the scope of the consultant's work.

11 IT IS FURTHER ORDERED that Qwest Corporation shall continue its Docket Governance
12 Team for a period of three years.

13 IT IS FURTHER ORDERED that Qwest Corporation shall provide prompt written notice of
14 the status and time frames of wholesale rate implementation to the Commission and the CLECs.

15 IT IS FURTHER ORDERED that Qwest Corporation shall implement new wholesale rates
16 within 60 days of the issuance of a Commission Decision that includes the final price list.

17 IT IS FURTHER ORDERED that Qwest Corporation shall file with the Commission any
18 settlement agreements entered into in Commission dockets of general application within 10 days of
19 execution.

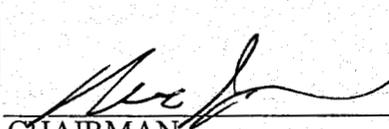
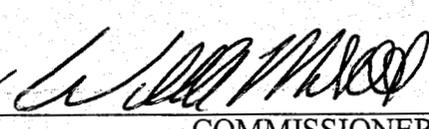
20 IT IS FURTHER ORDERED that Staff shall consider bringing an appropriate action against
21 McLeod and Eschelon and shall consider any other appropriate referrals.

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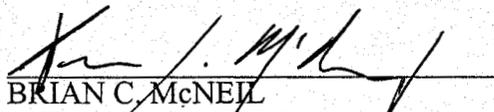
1 IT IS FURTHER ORDERED that Qwest Corporation based on its agreement during the April
2 21, 2004 Open Meeting will dismiss with prejudice its appeal of the Commission Decision No. 64922
3 (June 12, 2002) that it filed in the U.S. District Court for the District of Arizona [Case No. CIV 02-
4 1626 (PHX-SRB)] within 30 days of the effective date of this Decision. This Decision shall
5 constitute full and final resolution of the Litigation.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8
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10  CHAIRMAN  COMMISSIONER  COMMISSIONER
11 _____
12 COMMISSIONER  COMMISSIONER

13
14 IN WITNESS WHEREOF, I, BRIAN C McNEIL, Executive
15 Secretary of the Arizona Corporation Commission, have
16 hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this day of 30, April, 2004.

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20 BRIAN C. McNEIL
21 EXECUTIVE SECRETARY

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1	SERVICE LIST FOR:	QWEST CORPORATION	
2	DOCKET NO.:	T-00000A-97-0238	
3		RT-00000F-02-0271	
4		T-01051B-02-0871	
4	Qwest Corporation		Raymond Heyman
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9	Gallgher and Kennedy		Thomas F Dixon
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10	Phoenix Az 85016-9225		707 17th Street #3900
11	Timothy Berg		Denver Co 80202
11	Fennemore Craig		Richard W Wolters
12	3003 N. Central Ave., Suite 2600		AT&T & TCG
12	Phoenix Az 85016		1875 Lawrence Street Ste 1575
13	Mark Dioguardi		Denver Co 80202
14	Tiffany and Bosco Pa		Joyce Hundley
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15	Phoenix Az 85004		1401 H Street Nw Ste 8000
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17	Snell & Wilmer		Joan Burke
17	One Arizona Center		Osborn Maledon
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19	Stephen H Kukta		Phoenix Az 85067-6379
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21	Thomas H. Campbell		Phoenix Az 85007
22	Lewis & Roca		Gregory Hoffman
23	40 N. Central Ave.		AT&T
23	Phoenix Az 85007		759 Folsom Street, Rom 2159
24	Andrew O. Isar		San Francisco Az 94107-1243
25	TRI		Daniel Waggoner
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26	Gig Harbor Wa 98335		2600 Century Square
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27	Swidler & Berlin		Seattle Wa 98101-1688
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			1655 Massachusetts Ave. Suite 300
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SETTLEMENT AGREEMENT

Qwest Corporation ("Qwest" or "the Company") and the Arizona Corporation Commission Staff ("Staff"), ("the Parties") hereby agree to a settlement (the "Settlement Agreement" or "this Agreement") of certain Dockets currently pending before the Arizona Corporation Commission ("Commission"), specifically Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act); Docket No. T-00000A-97-0238 (Subdocket) (the 271 Subdocket which addressed allegations that Qwest interfered with the 271 regulatory process); and Docket No. T-01051B-02-0871 (the Order to Show Cause ("OSC") for not implementing Commission approved wholesale rates on a timely basis). These Dockets shall be collectively referred to in this Agreement as the "Litigation." The following terms and conditions are intended to resolve all of the issues raised in or associated with the Litigation.

RECITALS

WHEREAS, the Parties desire to adopt this Agreement subject to Commission approval;

WHEREAS, by adopting this Agreement, the Parties intend to settle and terminate the Litigation in a manner that is fair and reasonable;

WHEREAS, the 252(e) Unfiled Agreements Docket involved allegations that Qwest violated Section 252(e) of the Telecommunications Act by failing to file for Commission review and approval certain agreements with Competitive Local Exchange Carriers ("CLECs") operating in the state of Arizona;

WHEREAS, the 271 Subdocket involved allegations that Qwest improperly entered into settlement agreements with CLECs that resulted in the nonparticipation by such CLECs in the Commission docket evaluating Qwest's application under Section 271 of the Telecommunications Act, all without the Commission's knowledge; and that Qwest, thereby interfered with the 271 regulatory process;

WHEREAS, the Order to Show Cause involved allegations that Qwest failed to implement the wholesale rate changes ordered in Decision No. 64922 within a reasonable period of time, that Qwest failed to notify the Commission of rate implementation delay, that Qwest failed to obtain Commission approval of the delay in implementation, and that Qwest's wholesale rate change system is unreasonably slow and inefficient;

WHEREAS, Qwest acknowledges, without admitting any wrongdoing, the concerns raised regarding the allegations which are the subject of the Litigation and expresses its regret over the events leading to the Litigation and, without admitting wrongdoing, Qwest states its intention to comply fully in the future with all written laws, rules, regulations and orders governing Qwest's conduct;

WHEREAS, Qwest avows that it is the policy and commitment of the Company to conduct all of its business affairs in the state of Arizona with integrity, honesty, in conformance with Arizona laws and regulations and with respect for the regulatory processes of the Commission.

WHEREAS, Qwest also acknowledges, without admitting any wrongdoing, concerns raised by the parties, including the Staff, regarding allegations that its behavior was designed to intentionally deceive and misrepresent certain facts before the Commission. Further, without admitting any wrongdoing, Qwest avows that the Company and its official representatives will not engage in fraudulent, deceptive or intentionally unlawful conduct in any matters pending before the Arizona Corporation Commission.

WHEREAS, Qwest acknowledges that Commission approval of this Settlement Agreement shall constitute a Commission Decision directing that Qwest implement the provisions of this Settlement Agreement which are intended to assure future compliance with respect to the filing requirements of Section 252(e) of the Telecommunications Act, to assure timely implementation of future cost dockets and to assure that Qwest files with the Commission any settlement agreement with a telecommunications carrier that would result in the carrier not participating in any generic docket of industry-wide general concern pending before the Commission and that violations of those provisions may be punished by contempt after notice and a hearing as provided by A.R.S. Section 40-424;

WHEREAS, as detailed in this Agreement, Qwest shall apply monies and issue credits to resolve the events leading to the Litigation, as well as implement procedures and accede to independent monitoring, thereby demonstrating the commitment of corporate management to comply with and to address the Commission's stated concerns that Qwest is to comply with the filing requirements of Section 252(e) of the Telecommunications Act, implement cost docket decisions in a timely manner, and apprise the Commission of any settlement with a telecommunications carrier that would result in the carrier not participating in any generic docket of industry-wide general concern before the Commission;

WHEREAS, while Qwest denies any wrongdoing, the parties agree that the terms and conditions of this Agreement, including but not limited to, the Cash Payment, Voluntary Contributions and Minimum Settlement Amount, are fair, reasonable and in the public interest;

WHEREAS, in consideration thereof, the Parties agree as follows:

TERMS AND CONDITIONS

1. CASH PAYMENT.

Qwest agrees to pay an Aggregate Cash Payment Amount of \$5,197,000.00. The Parties have agreed that the Aggregate Cash Payment Amount shall be attributable to each portion of the Litigation as follows:

1. \$5,000,000.00 for the Dockets addressing Qwest's compliance with Section 252(e) and Qwest's alleged interference with the 271 regulatory process;
2. \$47,000.00 for the Docket addressing Qwest's compliance with Section 252(e);
3. \$150,000 for the Docket dealing with Qwest's implementation of the new wholesale rates.

Qwest agrees to pay the Aggregate Cash Payment Amount to the State Treasurer within 30 days of the Effective Date of the Commission's Decision approving this Agreement.

2. VOLUNTARY CONTRIBUTIONS.

Qwest agrees to make Voluntary Contributions in an amount of \$6,000,000.00, or more as detailed below, in the following areas:

1. Section 501(c)(3) organizations or other State-funded programs involved in the areas of education and/or economic development;
2. Educational programs designed to promote greater understanding of telecommunications issues by Arizona consumers;
3. Infrastructure Investment, including investments in Unserved and Underserved areas in the State of Arizona. Any party to this Agreement may also propose other projects, which may include by way of illustration but are not limited to the following:

investments to further route diversity for homeland security and 911 services, investments that promote the general welfare or safety of consumers, or investments in advanced services. All parties shall have the right to argue in support of or opposition to any of the proposed projects before the Commission, if agreement cannot be reached. This provision is not intended to prohibit the Commission from designating specific projects.

Qwest's initial Voluntary Contribution shall be in the amount of \$6,000,000.00. This amount shall be subject to increase to the extent that the Minimum Settlement Amounts specified in Paragraphs 3 through 5 below are not reached, subject to Paragraph 6 below. Further, Qwest agrees that all such investments shall be in addition to any investments, construction or work already planned by Qwest.

Parties will request that the Commission determine the percentage allocation (e.g. from 0 to 100) of the Voluntary Contributions to be made for each of the three investment categories (i.e., education, economic development, and Infrastructure Investment) forthwith or the Commission may designate such responsibility to its Director of Utilities. The parties agree that, in order to have the process of allocations of voluntary contributions work as efficiently as possible, they will request that the Commission provide guidance on the allocation of funds among the categories prior to submission of the project lists by the parties. The Commission or Director of Utilities shall have the discretion to revise such allocations on a project by project basis to the extent Qwest has not already spent the allocated funds or has not contractually committed the funds to a project previously approved by the Commission. Additional amounts added through non-expenditure by Qwest of any portion of the Minimum Settlement Amounts in Paragraphs 3 through 5 below shall be handled in a like manner.

Qwest shall be required to provide a proposed list of projects in each investment category within 30 days of the Effective Date of the Commission's Decision approving the Settlement Agreement, or in the case of additional projects, its notification to the Commission that the Minimum Settlement Amounts have not been met. Any other signatory to this agreement may

provide a list of projects for any category within 60 days of the Effective Date, for Commission consideration and approval or in the case of additional projects, within 60 days of Qwest's notification to the Commission that the Minimum Settlement Amounts have not been met. Qwest shall also be required to provide Staff with such additional information on those projects as well as other projects identified by Staff, to allow Staff to make its determinations in an informed manner. Such information shall include data which allows Staff to establish that the projects are in addition to any construction and work already planned by Qwest.

Within each investment category, approved projects shall be determined by the mutual written agreement of the Director of the Commission's Utilities Division and Qwest's Arizona President within 180 days of the Effective Date of the Commission's Decision approving this Agreement. Allocation to additional projects as a result of Qwest's not meeting the Minimum Settlement Amounts specified in Paragraphs 3 through 5, shall be approved within 180 days of Qwest's notification to the Commission that the Minimum Settlement Amounts have not been met. In the event that the Director of the Commission's Utilities Division and Qwest's Arizona President cannot agree, the decision on such project shall be escalated to the Commission for decision. If the projects do not require any additional facilities, construction or development of new programs, Qwest shall make its investments in the approved projects within 60 days of their approval by the Director of the Commission's Utilities Division and Qwest's Arizona President, or approval by the Commission if agreement cannot be reached.

If an approved project requires Qwest to develop additional facilities or development of new programs, construction of such facilities and implementation of such programs shall commence no later than 180 days of the mutual agreement of the Director of the Commission's Utilities Division and Qwest's Arizona President, barring any circumstances outside of Qwest's control, including but not limited to, right-of-way ("ROW"), permits, environmental studies, archaeological studies, contract and/or lease negotiations or force majeure events, which shall

extend the above-referenced construction date. Any such extensions of time shall first be approved by the Commission's Director of Utilities.

For purposes of the Infrastructure Investment category, "Unserved Area" shall be defined as any area outside of Qwest's current exchange boundaries not currently served or not adequately served by any wireline telephone service provider and other areas as determined or approved by the Commission. "Underserved Area" shall be defined as any area within Qwest's current exchange boundaries but outside the Base Rate Area which does not have Qwest wireline telephone facilities available.

For purposes of "Underserved Areas", Qwest will be required to invest an incremental amount over and above what it otherwise would have invested (the base amount). Qwest agrees to provide Staff with the information required to verify that any of the proposed projects represent an incremental amount over and above what it would have invested otherwise. Qwest's current line extension and construction tariff would continue to apply to the development of infrastructure for the purpose of expending the Voluntary Contributions under this agreement.

3. DISCOUNT CREDITS

Qwest further agrees to issue a one-time credit to Eligible CLECs, equal to 10 percent of the total amount of services purchased under 47 U.S.C. Sections 251 (b) and (c) (as defined by the FCC for the relevant time period) through their interconnection agreements with Qwest or through Qwest's Statement of Generally Available Terms and Conditions ("SGAT") during the time period from January 1, 2001, through June 30, 2002. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between January 1, 2001 through June 30, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue such Discount Credits to all Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving the Settlement Agreement. To obtain the Discount Credit, an Eligible CLEC shall be required to execute a

release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The amount of the aggregate Discount Credits shall neither exceed \$8,910,000.00 nor be less than \$8,100,000.00. If the aggregate Discount Credits provided to Eligible CLECs are less than \$8,100,000.00 (Minimum Settlement Amount for purposes of this Paragraph 3), Qwest shall contribute a sum equal to the difference (i.e., \$8,100,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate Discount Credits are greater than \$8,910,000.00, Qwest shall provide the Discount Credits in the aggregate amount of \$8,910,000.00 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$8,910,000.00 equal to the percentage of that CLEC's claim for Discount Credits to the total claims of all CLECs for Discount Credits).

4. ACCESS LINE CREDITS.

Qwest further agrees to issue one-time credits to Eligible CLECs at the rate of \$2.00 per month for each UNE-P line or unbundled loop purchased by the CLEC from Qwest between July 1, 2001, through February 28, 2002, less amounts billed and collected by each Eligible CLEC from Qwest for terminating intraLATA toll on a monthly basis during that same time period. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between July 1, 2001 through February 28, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue these one-time Access Line Credits to all Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving the Settlement Agreement. To obtain the Access Line Credits, an Eligible CLEC shall be required to execute a release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the

agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The total amount of the Access Line Credits shall neither exceed \$660,000.00 nor be less than \$600,000.00. If the aggregate Access Line Credits provided to Eligible CLECs are less than \$600,000.00 (Minimum Settlement Amount for purposes of this Paragraph 4), Qwest shall contribute a sum equal to the difference (i.e., \$600,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate Access Line Credits issued exceed \$660,000.00, Qwest shall provide Access Line Credits in the aggregate amount of \$660,000.000 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$660,000.00 equal to the percentage of that CLEC's claim for Access Line Credits to the total claims of all CLECs for Access Line Credits).

The following procedures shall apply in determining the amount of Access Line Credits to be provided by Qwest to CLECs:

- A. Within 30 days of the Effective Date of the Commission's Decision Approving the Settlement Agreement, Qwest will inform each CLEC operating in Arizona that purchased UNE-P or unbundled loops from Qwest from July 2001 through February 2002, that it may be eligible to receive a per UNE-P or per unbundled loop credit for terminating IntraLATA switched access, to be offset by collections from Qwest for the CLEC's terminating switched access. Qwest's notice will include the procedures for CLECs to respond as specified below.
- B. Within 60 days of being informed by Qwest of its possible eligibility, each CLEC will submit to Qwest information and documentation supporting the following:
 - i. The average number of UNE-P lines and unbundled loops leased by the CLEC in service per month from July 2001 through February 2002.

- ii. The amounts the CLEC actually collected from Qwest for terminating intraLATA switched access for the UNE-P lines or unbundled loops in service, for each month from July 2001 through February 2002.
- C. Within 60 days of the date Qwest receives the information specified in Subparagraph B from the CLEC, Qwest shall inform the CLEC of the amount of the credit it is due (the \$2 per line per month amounts less the offset calculated based upon the above information).
- i. Within 30 days of the date Qwest informs the CLEC of the amount of the credit it is due, Qwest shall credit to each CLEC that has executed a release of any and all claims against Qwest the amount that the CLEC is actually entitled to receive.
- D. If a CLEC fails to reasonably comply by not providing Qwest with any of the information necessary to determine the appropriate amount of credit, the CLEC will not be entitled to receive credits under this Paragraph. Notwithstanding the above, if the information is in the possession of Qwest, Qwest shall not require the CLEC to provide it again in order to receive the credit. If the information is not available to either Qwest or the CLEC, the CLEC will receive the amount that Qwest actually paid Eschelon each month, which is \$0.96 per line per month. Any disputes arising from this subpart shall be submitted to the Commission Staff for resolution.

5. UNE-P CREDITS.

Qwest further agrees to provide one-time credits to Eligible CLECs against future purchases for each month Qwest did not provide accurate daily usage information. These UNE-P credits shall be made at the rate of \$13 per month for each UNE-P line purchased by CLECs through their interconnection agreements with Qwest or Qwest's SGAT from November 1, 2000,

through June 30, 2001 and \$16 per month for each UNE-P line purchased by CLECs through their interconnection agreements with Qwest or through Qwest's SGAT from July 1, 2001, through February 28, 2002, less the amounts actually billed by these CLECs to interexchange carriers for switched access on an aggregate basis for such UNE-P lines during these monthly periods divided by the average number of UNE-P lines in service for that month. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between November 1, 2000 through February 28, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue the UNE-P Credits to Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving this Settlement Agreement. To obtain the UNE-P Credits, an Eligible CLEC shall be required to execute a release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The total amount of the UNE-P Credits shall neither exceed \$550,000.00 nor be less than \$500,000.00. If the aggregate UNE-P Credits issued to Eligible CLECs are less than \$500,000.00 (Minimum Settlement Amount for purposes of this Paragraph 5), Qwest shall contribute a sum equal to the difference (i.e., \$500,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate UNE-P credit exceeds \$550,000.00, Qwest shall provide UNE-P Credits in the aggregate amount of \$550,000.00 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$550,000.00 equal to the percentage of that CLEC's claim for UNE-P Credits to the total claims of all CLECs for UNE-P Credits).

The following procedures shall apply to determining the amount of UNE-P Credits to be provided by Qwest to the CLECs:

- A. Within 30 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest will inform each CLEC operating in Arizona that leased UNE-P from Qwest from November 2000 through February 2002, that it may be eligible to receive a per UNE-P Credit for each month Qwest did not provide accurate daily usage information, to be offset by actual billings to interexchange carriers ("IXCs") for switched access. Qwest's notice will include the procedures for CLECs to respond as specified below.
- B. Within 60 days of being informed by Qwest of its possible eligibility, each CLEC will submit to Qwest information and documentation supporting the following:
- i. The months from November of 2000 to February, 2002 that the CLEC believes it did not receive accurate daily usage information from Qwest.
 - ii. The reasons that the CLEC believes that the daily usage information was inaccurate.
 - iii. The average number of UNE-P lines leased by the CLEC in service for each such month that it believes it did not receive accurate daily usage information.
 - iv. The aggregate amount the CLEC actually billed interexchange carriers for switched access originated and terminated through such UNE-P lines for each month in which the CLEC believes Qwest's daily usage information was inaccurate.
- C. Within 60 days of the date Qwest receives the information specified in Subparagraph B from the CLEC, Qwest shall inform the CLEC of the amount of the credit it is due (the \$13 or \$16 per line per month amounts less the offset calculated based upon the above information) or the reasons that Qwest believes that the DUF files that it provided to the CLEC were accurate.

- i. Within 30 days of the date Qwest informs the CLEC of the amount of the credit it is due, Qwest shall credit to each CLEC that has executed a release of any and all claims against Qwest the amount that the CLEC is actually entitled to receive after adjusting for any offsets attributable to the CLEC; or
 - ii. If Qwest has informed the CLECs that it believes that the DUF files were accurate, the CLEC shall have 30 days to respond to Qwest. Qwest shall then have the burden of proving that the DUF files were accurate.
- D. If a CLEC fails to reasonably comply by not providing Qwest with any of the information necessary to determine the appropriate amount of credit, the CLEC will not be entitled to receive credits under this Paragraph. Notwithstanding the above, if the information is in the possession of Qwest, Qwest shall not require the CLEC to provide it again in order to receive the credit. Any disputes arising from this subpart shall be submitted to the Commission Staff for resolution.

6. ADDITIONAL VOLUNTARY CONTRIBUTIONS.

Qwest agrees that if the credits issued under Paragraphs 3 through 5 above, are less than the respective Minimum Settlement Amounts required under these same Paragraphs of this Agreement, Qwest shall make an additional voluntary contribution in the manner provided under Paragraphs 2 and 3 through 5 above and this Paragraph 6 in an amount equal to the remaining respective Minimum Settlement Amounts for the Discount, Access Line and UNE-P credits not issued to satisfy the terms of this Agreement. Qwest may deduct amounts attributable to Eligible CLECs that do not execute a release of any and all claims against Qwest from the amount of Discount Credits, Access Line Credits, and/or UNE-P Credits owed under this Agreement, for a period of one year from the Effective Date of the Commission Decision approving the Settlement Agreement. At the expiration of one year from the Effective Date of the Commission Decision

approving this Settlement Agreement, Qwest shall make additional Voluntary Contributions in the manner provided under Paragraphs 2 and 3 through 5 above in amounts equal to the remaining respective Minimum Settlement Amounts for the Discount, Access Line and UNE-P Credits not issued to satisfy the terms of this Agreement. Qwest may also deduct any amounts due under Paragraphs 3 through 5 of this Agreement for any individual CLEC which brings a claim within one year from the Effective Date of the Commission Decision approving the Settlement Agreement against Qwest arising out of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket). Qwest shall make the additional contributions required under this paragraph no later than 90 days from the submission of its final written report required in Paragraph 7 following.

7. REPORT ON CREDITS.

Within 240 days from the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest shall submit a written report to Staff demonstrating that it has issued the Discount Credits, Access Line Credits, and UNE-P Credits in the manner provided in Paragraphs 3 through 5 above. Qwest shall provide any additional reasonable information as may be requested by the Staff in determining that such credits were issued in a proper and timely manner. CLEC specific information shall be submitted as confidential information. If not all CLECs have executed a release of any and all claims against Qwest, Qwest shall submit a final written report 60 days after the one-year period specified in paragraph 6 above has expired.

8. RETENTION OF INDEPENDENT MONITOR.

Within 90 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest agrees to retain and thereafter pay for an independent third-party monitor, selected by the Director of the Commission's Utilities Division with input from Qwest, to conduct an annual review of the Qwest Wholesale Agreement Review Committee for a period

of three years from the Effective Date of the Commission's Decision approving the Settlement Agreement. The scope of the annual independent review shall be determined by the Staff with input from Qwest and interested parties. The Monitor must be able to demonstrate that he or she can offer an independent opinion, that no conflicts of interest will result from his or her selection and that he or she has not testified in a docket in Arizona involving Qwest in the past three years. Qwest may terminate its retention of the Monitor prior to the end of the three year period only upon the written consent of the Director of the Commission's Utilities Division.

9. COMPLIANCE TRAINING.

Qwest agrees to continue its Compliance Training Program for existing and new employees in the Local Network Services, Wholesale Markets, Product Management, Public Policy, and Law Departments for a minimum period of three years from the Effective Date of the Commission's Decision approving the Settlement Agreement. The Compliance Training Program is an internal web-based training program on compliance with Section 252(e) of the Act.

10. OPT-IN FOR ELIGIBLE CLECS.

Any CLEC currently certificated and operating in Arizona may opt-in to the non-monetary provisions relating to Section 251(b) and (c) services of any agreement listed on Table 1 of the pre-filed Direct Testimony of Marta Kalleberg in Docket No. RT-00000F-02-0271. In exercising opt-in, however, the CLEC must satisfy the criteria under Section 252(i), including but not limited to, assuming any and all related terms in the agreement it chooses.

If a dispute between Qwest and the CLEC arises regarding the eligibility of the CLEC to opt-in to certain provisions of any agreement, Qwest and/or the CLEC may submit a request for a Commission determination in Phase II of Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act).

11. WITHDRAWAL OF FEDERAL APPEAL.

Qwest further agrees to voluntarily move to 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 Appeal")) within 30 days of the Effective Date of the Commission's Decision approving the Settlement Agreement.

Until its filing for dismissal is made with the Court, Qwest agrees to seek whatever extensions of time are necessary and to inform the Court that a settlement has been entered into with the Commission that would result in dismissal of the Appeal. The Staff agrees to support Qwest's motion to dismiss the Appeal, and any extensions of time which Qwest requests.

Each party to the Appeal, however, will be required to bear its own attorneys' fees and costs incurred therein.

12. RETENTION OF CONSULTANT FOR IMPLEMENTATION OF WHOLESALE RATES.

Qwest further agrees that within 90 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest shall retain and thereafter pay for an independent third-party consultant, selected by the Director of Utilities with input from Qwest. Qwest's obligation to pay the billings of the third party consultant shall be limited to a total payment of no more than \$150,000. The scope of the Consultant's work shall be determined by the Commission Staff with input from Qwest and interested parties. The Consultant shall provide independent assessments to the Commission and its Staff of improvements made to automate Qwest's wholesale rate implementation processes. The Consultant shall provide

recommendations on further process changes with the goal of mechanizing of Qwest's wholesale implementation processes, to the extent technologically and economically feasible. Qwest agrees to meet with Staff to discuss the economic and practical feasibility of implementing the recommendations contained in such reports. Qwest shall retain the Consultant for a period of three years from the Effective Date of the Commission's Decision approving this Settlement Agreement but may terminate its retention of the consultant prior to the end of the three year period only upon the written consent of the Director of the Commission's Utilities Division.

13. COST DOCKET GOVERNANCE TEAM.

Qwest agrees to continue its Cost Docket Governance Team for a period of three years from the Effective Date of the Commission's Order approving the Settlement Agreement. The Cost Docket Governance Team is a team comprised of executive level personnel from organizations within Qwest with primary involvement and responsibility for wholesale cost docket implementation in Arizona. Those organizations include: Wholesale Product Management, Wholesale Service Delivery, and Public Policy. The purpose of the team is to provide both an oversight role and to serve as an escalation point for issues or obstacles that may arise during the implementation process. Qwest may dissolve the OSC Governance Team before the end of the three year period only with the Director of Utilities' written consent.

14. NOTIFICATION OF WHOLESALE RATE CHANGES TO COMMISSION AND CLECS.

Qwest further agrees to provide prompt written notification to its wholesale customers in Arizona of changes in their wholesale rates upon the occurrence of any of the following events: (a) the issuance of a final Commission Decision changing wholesale rates, which contains updated wholesale rate sheets; and (b) the appearance of the new Commission-approved wholesale rates on customer bills. Qwest shall promptly provide information to the Commission

and Staff concerning the status and time frames for implementation of future changes in wholesale rates.

Qwest shall meet and confer with Staff one year from the Effective Date of the Commission's Decision approving the Settlement Agreement concerning: (a) the status of Qwest wholesale rate implementation in Arizona; (b) current industry expectations relative to wholesale rate implementation; and (c) Qwest business practices relative to wholesale rate implementation and the negotiation of interconnection agreements with other Arizona carriers.

15. WHOLESALE RATE IMPLEMENTATION.

Qwest shall file its initial compliance filing including a numeric price list within fourteen (14) days of a recommended opinion and order. If Qwest determines that additional time is necessary to complete the filing based on good cause, such as the absence of essential information in the recommended opinion and order to permit numeric wholesale rates to be calculated or a need to restructure the applicable cost model, Qwest shall apply to the Commission for an extension of time to make the compliance filing. Qwest shall implement prospectively all ordered wholesale rates within 60 days from the effective date of the final Commission Decision approving rates and setting forth the numeric wholesale rates to be implemented. Qwest will use its best efforts to determine the numeric rates resulting from the Commission's modifications to the recommended opinion and order in a timely fashion, for inclusion in a final Commission Decision approving new wholesale rates and setting forth numeric wholesale rate changes. Within 60 days from the effective date of the final Commission Decision approving new wholesale rates and setting forth new numeric wholesale rates to be implemented, Qwest shall perform all necessary back-billing back to the effective date of the Commission's Order setting forth the new numeric rates. Qwest may petition the Commission for additional time to implement these rates in the event there are circumstances

beyond Qwest's control that necessitate additional time for implementation, and the Commission shall not withhold approval of such request upon good cause shown.

16. FILING OF SETTLEMENT AGREEMENTS.

Commencing on the Effective Date of the Commission's Decision approving the Settlement Agreement, Qwest shall docket, within ten days of execution, with the Commission any settlement agreements reached in Commission dockets of general application. On December 31, 2003 and for three years from the Effective Date of the Commission's Order approving the Settlement Agreement, Qwest shall submit to Staff a written statement attesting to the fact that Qwest either has not reached any settlement agreements in Commission dockets of general application for the applicable year, or has docketed such settlement agreements with the Commission.

17. EFFECTIVE DATE.

The "Effective Date" as used in this Agreement shall mean the date by which the Commission's Order approving this Settlement Agreement becomes final by the expiration of the periods set forth in A.R.S. Section 40-253 for the filing and consideration of an application for rehearing.

18. DISMISSAL OF LITIGATION.

Issuance of the Commission's Decision Approving this Settlement Agreement shall constitute full and final resolution of the Litigation, and the Decision shall include an order terminating and closing Phase I of Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act); Docket No. T-00000A-97-0238 (271 Subdocket) (Qwest's Interference with the 271 Regulatory Process); and Docket No. T-01051B-02-0871 (OSC Regarding Qwest's Failure to Implement Wholesale Rates in a Timely Manner).

19. COMMISSION APPROVAL AND SEVERABILITY.

Each provision of this Agreement is in consideration and support of all other provisions, and expressly conditioned upon acceptance and approval by the Commission without change. Unless the Parties to this Agreement otherwise agree, in the event that the Commission does not accept and approve this Agreement according to its terms, then it shall be deemed withdrawn by the Parties and the Parties shall be free to pursue their respective positions in the Litigation without prejudice.

20. COMPROMISE.

This Agreement represents the Parties' mutual desire to compromise and settle all disputed claims at issue in the Litigation in a manner consistent with the public interest and based upon the pre-filed testimony and exhibits and the evidentiary record developed in the Litigation. This Agreement represents a compromise of the positions of the Parties. Acceptance of this Agreement is without prejudice to any position taken by any party in the Litigation and none of the provisions may be referred to, cited or relied upon by any other party in any fashion as precedent or otherwise in any proceeding before this Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purposes and results of this Agreement.

21. PRIVILEGED AND CONFIDENTIAL COMMUNICATIONS.

All negotiations relating to or leading to this Agreement are privileged and confidential, and no party is bound by any position asserted in negotiations, except to the extent expressly stated in this Agreement. As such, evidence of conduct or statements made in the course of negotiation of this Agreement are not admissible as evidence in any proceeding before the Commission, any other regulatory agency or any court.

22. COMPLETE AGREEMENT.

This Agreement represents the complete agreement of the Parties. There are no understandings or commitments other than those specifically set forth herein. The Parties acknowledge that this Agreement resolves all issues that were raised in the Litigation and is a complete and total settlement between the Parties.

23. SUPPORT AND DEFEND.

Each Signatory Party will support and defend this Agreement and any order entered by the Commission approving this Agreement before the Commission or other regulatory agency or before any court in which it may be at issue.

24. APPEALS AND CHANGE OF LAW.

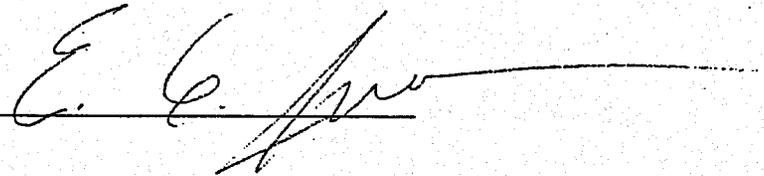
The Parties believe that this Settlement Agreement is in the public interest and lawful. Nothing herein shall be construed as prohibiting Qwest from obtaining a refund of the Cash Payment from the State Treasury made pursuant to Paragraph 1 of the Settlement Agreement, or from conditioning the tender of the Cash Payment to the State Treasury upon the right to a refund, if the court of the highest jurisdiction to which the matter is appealed should ultimately find in a final, nonappealable order that the Settlement Agreement is unlawful or that the Commission Decision approving the Settlement Agreement is reversed. If such condition precludes the acceptance of the Cash Payment by the State Treasury, then the Cash Payment under Paragraph 1 of this Settlement Agreement shall be placed in an interest-bearing escrow account at a financial institution that is mutually agreed to by Staff and Qwest. If no appeal of the Commission Decision approving the Settlement Agreement is filed or if the Court ultimately enters a final, nonappealable order finding the Settlement Agreement is lawful or the

Commission Decision approving the Settlement Agreement is affirmed, the principal and interest contained in the escrow account shall be paid to the State Treasury without further condition. If the court of the highest jurisdiction to which the matter is appealed ultimately finds in a final, nonappealable order that the Settlement Agreement is unlawful or the Commission Decision approving the Settlement Agreement is reversed, the principal and interest contained in the escrow account shall be returned to Qwest. It is further understood that if the court of the highest jurisdiction to which the matter is appealed should ultimately find in a final, nonappealable order that the Settlement Agreement is unlawful or the Commission Decision approving the Settlement Agreement is reversed, Qwest will have no further obligation to make any remaining Voluntary Contributions pursuant to Paragraph 2 of the Settlement Agreement. If a court of lower or intermediate jurisdiction enters an order finding the Settlement Agreement is unlawful or that the Commission's Decision approving the Settlement Agreement shall be reversed, Qwest's obligations pursuant to Paragraphs 1 and 2 will be suspended until the entry of a final, nonappealable order of a higher court finding the Settlement Agreement is lawful or that the Commission Decision approving the Settlement Agreement is affirmed. The Staff shall not oppose Qwest obtaining from the State Treasury a refund of the Cash Payment or Qwest conditioning the payment of the Cash Payment to the State Treasury on the right to a refund, all as set forth in this Paragraph 24. Except as specifically provided in this Paragraph 24, Qwest shall not otherwise place conditions on the payment of the Cash Payment to the State Treasury. In the event that the State Treasury does not accept Qwest's conditional tender of the Cash

Payment, Qwest agrees to negotiate in good faith with the State Treasury in an effort to reach mutually-acceptable conditions for tender of the Cash Payment prior to placing the Cash Payment in an escrow account pursuant to this Paragraph.

DATED this 25th day of July, 2003.

ARIZONA CORPORATION COMMISSION

BY: 

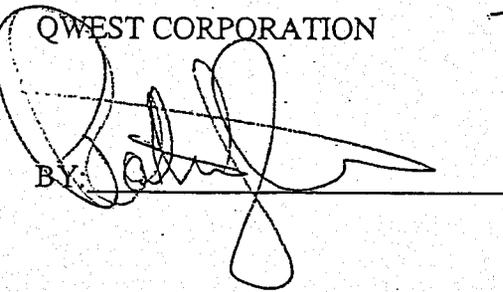
QWEST CORPORATION TL
BY: 

Table No. 1

No.	Company	Description
1.	Eschelon (formerly ATD)	Confidential/Trade Secret Stipulation with US WEST dated 2/28/00
2.	Eschelon	Trial Agreement with Qwest dated 7/21/00
3.	Eschelon	Confidential Purchase Agreement with Qwest dated 11/15/00
4.	Eschelon	Confidential Amendment to Confidential/Trade Secret Stipulation with Qwest dated 11/15/00
5.	Eschelon	Escalation Procedures Letter from Qwest dated 11/15/00
6.	Eschelon	Daily Usage Information Letter from Qwest dated 11/15/00
7.	Eschelon	Feature Letter for Qwest dated 11/15/00
8.	Eschelon	Confidential Billing Settlement Agreement with Qwest dated 11/15/00
9.	Eschelon	Status of Switched Access Minute Reporting Letter from Qwest dated 11/15/00
10.	Eschelon	Implementation Plan with Qwest dated 7/31/01
11.	McLeod	Confidential Settlement Document with US WEST dated 4/25/00
12.	McLeod	Confidential Billing Settlement Agreement with Qwest dated 9/29/00
13.	McLeod	Amendment to Confidential Billing Settlement Agreement with Qwest dated 10/26/00
14.	McLeod	Volume Discount Agreement with Qwest dated on or around 10/26/00
15.	McLeod	Purchase agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (McLeod buys from Qwest) dated 10/26/00
16.	McLeod	Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") ("Qwest buys from McLeod) dated 10/26/00
17.	Electric Lightwave	Confidential Settlement Agreement and Release with US WEST dated 6/16/99
18.	ElectricLightwave	Confidential Settlement Agreement and Release with US WEST dated 12/30/99
19.	ElectricLightwave	Amendment No. 1 to Confidential Billing Settlement Agreement and release with US WEST dated 6/21/00
20.	ElectricLightwave	Binding Letter Agreement with Qwest dated 7/19/01
21.	Allegiance	Internetwork Calling Name Delivery Service Agreement with US WEST dated 3/23/00
22.	Allegiance	Directory Assistance Agreement with US WEST dated 6/29/00

EXHIBIT B

23.	Global Crossing	Settlement Agreement and Release with Qwest dated 9/18/00
24.	GST	Confidential Billing Dispute Settlement Agreement and Release with US WEST dated 1/7/00
25.	Paging Network	Confidential Billing Statement Agreement with Qwest dated 4/23/01
26.	SBC & NAS	Confidential Consent to Assignment & Collocation Change of Responsibility Agreement with Qwest dated 6/1/01
27.	Worldcom	Confidential Billing Settlement Agreement with Qwest dated 12/17/00
28.	XO (formerly Nextlink)	Confidential Billing Settlement Agreement with US WEST dated 5/12/00

EXHIBIT B

DECISION NO. 66949

CONFIDENTIAL ATTACHMENT A DOCKET NO. T-00000A-97-0238 et al
 GLOBAL SETTLEMENT AGREEMENT
 DOCKET NOS. RT-00000F-02-0271; T-00000A-97-0238; T-01051B-02-0871
 APRIL 14, 2004

Customer Name	Total
Allegiance	
Adelphia	
Arrival Communications	
AT&T	4,487,881
AZ Dial Tone	647,121
Broadwing Carrier	
Cable Plus	
Cable & Wireless	
Caprock	
Compass Telecommunications	
CommSouth	132,371
Covad	386,303
Cox	291,891
DPI Teleconnect	
DSL.net	
Econophone	
ELI	126,667
Ernest Telcom	
Excel	
EZ Talk Communications	
Fibermet Telecom	
Integra	42,957
Ionex	
Jato	
Level 3	100,000
Mountain Telecommunications (MTI)	251,043
National Brands	
New Vector	
New Edge	9,872
North County Communications	
NTS Communications Inc.	
One Call	
Other	
PacWest	
Pagemart	
Phones For All	
Popp	
PT1	
Prism	
Regal Telephone Company	
SBC	
Servisense	
Slimcom	
Smoke Signal Communications	
SNET	
Sprint	2,445,271
Startec Global Comm. Corp	
Sterling International	
Talk America	
TCAST Communication	
Tess	72,739
Time Warner	100,000
Touch 1 Communications	
TransAmerican Telephone Inc	
TSI	
Verizon	
Westel	
Williams	
WorldxChange Corp	
XO	203,013
Xspedius	52,607
Z-Tel	
TOTAL	10,149,738