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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

2005 MAY -3 P 12: 09

Arizona Corporation Commission

DOCKETED

MAY 03 2005

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

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF
MCIMETRO ACCESS TRANSMISSION
SERVICES, LLC, FOR APPROVAL OF AN
AMENDMENT FOR ELIMINATION OF UNE-P
AND IMPLEMENTATION OF BATCH HOT CUT
PROCESS AND QPP MASTER SERVICE
AGREEMENT.

DOCKET NO. T-01051B-04-0540
DOCKET NO. T-03574A-04-0540

PROCEDURAL ORDER

BY THE COMMISSION:

On July 28, 2004, MCImetro Access Transmission Services, LLC ("MCImetro") filed an application with the Arizona Corporation Commission ("Commission") seeking approval of a negotiated amendment to an Interconnection Agreement between MCImetro and Qwest Corporation ("Qwest")¹, for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts, and for approval of a QPP Master Service Agreement.

On August 6, 2004, Qwest filed a Motion to Dismiss Application for Review of Negotiated Commercial Agreement (with Alternative Request for Intervention). Qwest argues that the QPP Master Service Agreement ("QPP Agreement") is a "Commercial Agreement" that does not alter the terms of the existing Interconnection Agreement between Qwest and MCImetro and does not create any terms or conditions for services that Qwest must provide under Sections 251(b) and (c) of the Telecommunications Act. Qwest contends, therefore, that the QPP Agreement is beyond the scope of the Commission's jurisdiction and should be excluded from consideration in MCImetro's pending application.

On August 13, 2004, Qwest filed a Request for Suspension of 30-Day Time Clock pursuant to A.A.C. R14-2-1508. Qwest requested suspension of the applicable time clock rules so that the Commission would have sufficient time to consider Qwest's Motion to Dismiss.

¹ The underlying Interconnection Agreement between MCImetro and US WEST Communications, Inc., was approved by the Commission in Decision No. 60308 (July 31, 1997).

1 On August 24, 2004, MCImetro filed a Response to Qwest's Motion to Dismiss. MCImetro
2 argues that the QPP Agreement was properly submitted for the Commission's approval under Section
3 252 of the federal Telecommunications Act of 1996 ("1996 Act"), as well as under the Commission's
4 rules governing approval of interconnection agreements.

5 Staff filed its Response to Qwest's Motion to Dismiss on September 10, 2004. Staff agreed
6 with MCImetro that the QPP Agreement was properly submitted for the Commission's approval
7 under Section 252 of the 1996 Act. Staff also asserts that the Commission retains jurisdiction to
8 review the QPP Agreement under Section 271 of the 1996 Act, and that there is no federal
9 preemption of the Commission's authority regarding this matter.

10 On September 20, 2004, Qwest filed a Joint Reply to the Responses submitted by AT&T,
11 MCImetro, and Staff. Qwest reiterated its arguments that the QPP Agreement is a commercial
12 agreement that is not subject to state Commission approval under either Section 252 or 271 because
13 the Federal Communications Commission ("FCC") has exclusive authority over such agreements.

14 Supplemental authority was submitted by Staff and MCImetro in October and November
15 2004 in the form of decisions by various state commission regarding motions to dismiss similar
16 applications in those states.

17 On November 23, 2004, Qwest filed a Supplemental Brief in Support of its Motion to
18 Dismiss.

19 On November 30, 2004, an oral argument was conducted on the issues raised by Qwest's
20 Motion to Dismiss.

21 In the intervening time period since MCImetro's application was filed in this proceeding, a
22 number of virtually identical QPP Agreements between Qwest and other CLECs have been either
23 filed with the Commission for approval or submitted to Staff for informational purposes and/or
24 review.

25 On April 19, 2005, Qwest and Staff filed a Joint Motion for Consolidation of Dockets and
26 Request for ALJ to Take Notice ("Joint Motion"). Qwest and Staff request that, in the interest of
27 judicial economy, the resolution of Qwest's Motion to Dismiss in the above-captioned Docket should
28 be deemed controlling with respect to the question of whether the QPP Agreements should be filed

1 with the Commission for approval under Section 252 of the 1996 Act. Attached to the Joint Motion
2 is a list and brief description of all other QPP Agreements between Qwest and Arizona CLECs,
3 whether such agreements were filed and assigned a docket number or were submitted to Staff for
4 review purposes only². Qwest and Staff state that, although they have not discussed the Joint Motion
5 with the other parties to the QPP Agreements, the various other parties should be given 10 days to
6 object to a Procedural Order granting consolidation and, absent objection, the agreements should be
7 deemed consolidated.

8 The Joint Motion is reasonable and should be granted. Therefore all QPP Agreements
9 previously filed or submitted for Staff review, as listed on Attachment A hereto, shall be consolidated
10 for the sole purpose of determining whether such agreements should be filed for the Commission's
11 approval under Section 252 of the 1996 Act³. The ruling rendered on Qwest's Motion to Dismiss
12 shall also apply to future QPP Agreements between Qwest and CLECs. All parties listed on
13 Attachment A shall have until May 23, 2005 to file objections to consolidation of this issue. If no
14 objections are received by that date, the agreements shall be deemed consolidated for the limited
15 purpose cited above. However, any separate dockets related to QPP Agreements for other CLECs are
16 not being formally consolidated for any other purposes.

17 IT IS THEREFORE ORDERED that all QPP Agreements previously filed or submitted for
18 Staff review, as listed on Attachment A hereto, shall be consolidated for the sole purpose of
19 determining whether such agreements should be filed for the Commission's approval under Section
20 252 of the 1996 Act.

21 IT IS FURTHER ORDERED that the ruling rendered on Qwest's Motion to Dismiss shall
22 also apply to future QPP Agreements between Qwest and additional CLECs.

23 IT IS FURTHER ORDERED that all parties listed on Attachment A shall have until May 23,
24 2005 to file objections to consolidation of this issue. If no objections are received by that date, the
25 agreements shall be deemed consolidated for the limited purpose cited above. However, any separate
26 dockets related to QPP Agreements for other CLECs are not being formally consolidated for any

27 _____
28 ² The list attached to the Joint Motion is replicated and attached to this Procedural Order.

³ The QPP Agreements *are not* being consolidated for Docket Control record keeping purposes.

1 other purposes.

2 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,
3 amend, or waive any portion of this Procedural Order by subsequent Procedural Order or by ruling at
4 hearing.

5 DATED this 3rd day of May, 2005.

7 

8 DWIGHT D. NODES
9 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

10 Copies of the foregoing mailed/delivered
11 this 3rd day of May, 2005 to:

12 Thomas F. Dixon
13 MCIMETRO ACCESS
14 TRANSMISSION SERVICES, LLC
15 707 17th Street, #4200
16 Denver, Colorado 80202

Letty Friesen
AT&T and TCG
1875 Lawrence Street, Ste. 1503
Denver, CO 80202-1870

16 Thomas H. Campbell
17 Michael T. Hallam
18 LEWIS AND ROCA
19 40 N. Central Avenue
20 Phoenix, Arizona 85004

Ron Waters
TRINSIC (Z-TEL COMMUNICATIONS)
601 S. Harbour Island Blvd., Ste. 220
Tampa, FL 33602

19 Norman G. Curtright
20 QWEST CORPORATION
21 4041 N. Central Avenue, Suite 1100
22 Phoenix, Arizona 85012

Matt O'Flaherty
NORTHSTAR TELECOM, INC.
1001 Hills Road
Fremont, NE 68025

22 Timothy Berg
23 Theresa Dwyer
24 FENNEMORE CRAIG
25 3003 N. Central Ave., Suite 2600
26 Phoenix, Arizona 85012

Ric Jones
James R. Beaver
LIVE WIRE PHONE COMPANY
PMB 465, 21001 N. Tatum Blvd., Ste. 78-
1630
Phoenix, AZ 85029

25 Joan S. Burke
26 OSBORN MALEDON
27 2929 N. Central Avenue, Ste. 2100
28 Phoenix, AZ 85012-2794

Jerry Nussbaum
PREFERRED LONG DISTANCE
16830 Ventura Blvd, Ste. 350
Encino, CA 91436

1 R. Daniel Hyde, Jr.
BUDGET PHONE, INC.
2 6901 W. 70th Street
Shreveport, LA 71129

3 Kevin Shady
4 LIGHTYEAR NETWORK SOLUTIONS,
LLC
5 1901 East Point Parkway
6 Louisville, KY 40223

7 Sarah Padula
POPP TELECOM, INC.
8 620 Mendelssohn Avenue, N
9 Golden Valley, MN 55427

10 Ruben Garcia
TELSCAPE COMMUNICATIONS
11 606 E. Huntington Drive
12 Monrovia, CA 91016

13 Karen L. Clauson
ESCHELON TELECOM, INC.
14 730 2nd Avenue South, Ste. 1200
15 Minneapolis, MN 55402

16 William E. Braun
1-800-RECONEX, INC. dba USTEL
17 2500 Industrial Avenue
Hubbard, OR 97032

18 Dave Stevanovski
19 ACN COMMUNICATIONS
20 32991 Hamilton Court
Farmington Hills, MI 48334

21 Karen Johnson
22 INTEGRA TELECOM, INC.
19545 NW Von Neumann Drive, Ste. 200
23 Beaverton, OR 97006

24 Julia Redman-Carter
25 McLEODUSA INCORPORATED
6400 C. Street SW, Box 3177
26 Cedar Rapids, IA 52406

David Aronow
METROPOLITAN
TELECOMMUNICATIONS OF ARIZONA,
INC.
44 Wall Street, 6th Floor
New York, NY 10005

Rob McMillin
NEW EDGE NETWORK, INC.
3000 Columbia Blvd., Ste. 106
Vancouver, WA 98661

Paul Riss
NEW ROCHELLE TELEPHONE CORP.
75 South Broadway, Ste. 302
White Plans, NY 10601

Christopher Station
PIPERTEL COMMUNICATIONS, LLC
2100 S. Cherry Street, Ste. 230
Denver, CO 80222

Alex Valencia
PREFERRED CARRIER SERVICES, INC.
dba PHONES FOR ALL FOR THE STATE
OF ARIZONA
14681 Midway Road, Ste. 105
Addison, TX 75001

Jeff Swickard
TEL WEST COMMUNICATIONS, LLC
3701 S. Norfolk Street, Ste. 300
Seattle, WA 98118

Dale Dixon
VYCERA COMMUNICATIONS, INC.
12750 High Bluff Drive, Ste. 200
San Diego, CA 92130

Frank McGovern
QUALITY TELEPHONE, INC.
301 N. Market Street, Ste. 400
Dallas, TX 75202

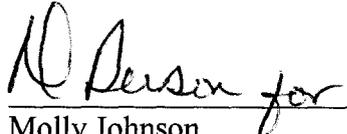
Scott Loney
BULLSEYE TELECOM, INC.
25900 Greenfield Road, Ste. 330
Oak Park, MI 48237

1 Paul Masters
2 ERNEST COMMUNICATIONS
3 5275 Triangle Parkway, Ste. 150
4 Norcross, GA 30092

4 Geoff Cookman
5 GRANITE TELECOMMUNICATIONS
6 234 Copeland Street
7 Quincy, MA 02169

7 Christopher K. Kempley, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

10 Ernest Johnson, Director
11 Utilities Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, Arizona 85007

13
14 By: 
15 Molly Johnson
16 Secretary to Dwight D. Nodes
17
18
19
20
21
22
23
24
25
26
27
28

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between Qwest Corp. and Vycera Communications, Inc.”</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-22-05</p> <p>Staff letter to parties 2-23-05</p> <p>Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>Application of Qwest Corp. for Approval of an Interconnection Agreement with Granite Telecommunications, Inc.</p> <p>(QPP)</p>	T-1051B-04-0764 T-04208A-04-0764	<p>Agreement given to Staff for informational purposes 9-1-04</p> <p>Agreement docketed by Staff 10-25-04</p> <p>Qwest filed Motion to Dismiss 11-8-0404</p> <p>Staff filed Response to Motion to Dismiss 12-2-04</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and New Rochelle Telephone Corp. fka Peconic Telco”</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-10-05</p> <p>Staff letter to parties 2-18-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>"Commercial Agreement between Qwest Corp. and AT&T and TCG"</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-15-05</p> <p>Staff letter to parties 2-18-05</p> <p>Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>"Commercial Agreement between Qwest Corp. and Integra Telecom of Arizona, Inc."</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-15-05</p> <p>Staff letter to parties 2-18-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>"Commercial Agreement between Qwest Corp. and McLeodUSA Telecommunications Services, Inc."</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-15-05</p> <p>Staff letter to parties 2-18-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>"Commercial Agreement between Qwest Corp. and Preferred Carrier Services Inc. dba</p>	None	<p>Agreement given to Staff for informational purposes 2-15-05</p> <p>Staff letter to</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>Phones for All” (QPP)</p>		<p>parties 2-18-05 Staff docketed Agreement 4-11-05</p>	
<p>“Commercial Agreement between Qwest Corp. and Metropolitan Telecommunications of Arizona, Inc.” (QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-24-05 Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Quality Telephone, Inc.” (QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-17-05 Staff letter to parties 2-18-05 Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>Application of MCI metro Access Transmission Services for Approval of an Amendment for Elimination of UNE-P and Implementation of Batch Hot Cut Process and QPP Master Services</p>	<p>T-01051B-04-0540 T-03574A-04-0540</p>	<p>Agreement docketed 7-28-04 by MCI metro Qwest filed Motion to Dismiss Application for Review of Negotiated Commercial Agreement 8-6-04 Qwest filed</p>	<p>Consolidate other QPP cases into this one</p>

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
		Request for Suspension of Time Clock 8-13-04 Staff filed Response to Motion to Dismiss 9-20-04	
Application of Qwest Corp. for Interconnection Agreement with Z-Tel Communications, Inc. (QPP)	T-01051B-04-0925 T-03589A-04-0925	Agreement given to Staff for informational purposes 11-10-04 Agreement docketed by Staff 11-23-04 Staff letter to parties 11-24-05 Qwest filed Motion to Dismiss 1-12-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
Application of Qwest Corp. for an Interconnection Agreement with Northstar Telecom, Inc. (QPP)	T-01051B-04-0926	Agreement given to Staff for informational purposes 10-28-04 Staff letter to parties 11-24-04 Agreement docketed by Staff 12-23-04 Qwest filed Motion to Dismiss 1-12-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between ACN Communication Services, Inc. and Qwest Corp.”</p> <p>(OPP)</p>	None	<p>Agreement given to Staff for informational purposes 1-17-05</p> <p>Staff letter to parties 1-27-05</p> <p>Agreement docketed by Staff 4-11-05</p> <p>Qwest filed Motion to Dismiss 2-10-05 (Qwest filed this Motion in Docket 05-0032)</p>	<p>Consolidate with Docket Nos.</p> <p>T-01051B-04-0540</p> <p>T-03574A-04-0540</p>
<p>Application of the J. Richard LLC, dba Live Wire Phone Company for Approval of the QPP Master Service Agreement</p>	<p>T-04257A-05-0048</p> <p>T-01051B-05-0048</p>	<p>Agreement given to Staff for informational purposes 12-15-04</p> <p>Staff letter to parties 1-14-05</p> <p>Agreement docketed 1-26-05 by J. Richard</p> <p>Qwest filed Motion to Dismiss 2-7-05</p>	<p>Consolidate with Docket Nos.</p> <p>T-01051B-04-0540</p> <p>T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Preferred Long Distance Inc.”</p>	None	<p>Agreement given to Staff for informational purposes 1-28-05</p> <p>Staff letter to</p>	<p>Consolidate with Docket Nos.</p> <p>T-01051B-04-0540</p> <p>T-03574A-04-0540</p>

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
(QPP)		parties 2-8-05 Qwest filed Motion to Dismiss 2-11-05 (Qwest filed this Motion in Docket 05-0050) Staff docketed Agreement 4-11-05	
"Commercial Agreement Between Qwest Corp. and Budget Phone, Inc. (QPP)	None	Agreement given to Staff for informational purposes 1-31-05 Staff letter to parties 2-8-05 Qwest filed Motion to Dismiss 2-11-05 (Qwest filed this Motion in Docket 05-0063) Staff docketed Agreement 4-11-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
"Commercial Agreement between Qwest Corp. and Lightyear Network Solutions, LLC " (QPP)	None	Agreement given to Staff for informational purposes 2-1-05 Staff letter to parties 2-8-05 Qwest filed Motion to Dismiss 2-11-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
		<p>(Qwest filed this Motion in Docket 05-0066)</p> <p>Staff docketed Agreement 4-11-05</p>	
<p>“Commercial Agreement between Qwest Corp. and Popp Telecom, Inc.”</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-8-05</p> <p>Staff letter to parties 2-9-05</p> <p>Qwest filed Motion to Dismiss 2-11-05 (Qwest filed this Motion in Docket 05-0079)</p> <p>Staff docketed Agreement 4-11-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Telscape Communications, Inc.”</p> <p>(QPP)</p>	T-04215A-05-0113 T-01051B-05-0113	<p>Agreement given to Staff for informational purposes 2-8-05</p> <p>Staff letter to parties 2-9-05</p> <p>Qwest filed Motion to Dismiss 2-11-05 (Qwest filed this Motion in Docket 05-0080)</p> <p>Telscape docketed Agreement</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
		2-18-05	
<p>“Commercial Agreement between Qwest Corp. and Eschelon Telecom of Arizona, Inc.</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-8-05</p> <p>Staff letter to parties 2-9-05</p> <p>Qwest filed Motion to Dismiss 2-11-05 (Qwest filed this Motion in Docket 05-0081)</p> <p>Eschelon filed its application for approval of QPP agreement in Docket 05-0081 2-24-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and PiperTel Communications LLC”</p> <p>(QPP)</p>	None	<p>Agreement given to Staff for informational purposes 2-24-05</p> <p>Staff letter to parties 4-1-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Ernest</p>	None	<p>Agreement given to Staff for informational purposes 3-10-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
Communications, Inc.” (QPP)		Staff letter to parties 3-16-05 Staff docketed Agreement 4-11-05	
“Commercial Agreement between Qwest Corp. and Bullseye Telecom Inc.” (QPP)	None	Agreement given to Staff for informational purposes 3-7-05 Staff letter to parties 3-16-05 Staff docketed Agreement 4-12-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement Between Qwest Corp. and Global Crossing Local Services Inc. fka Frontier Local Services” (QPP)	None	Agreement given to Staff informational purposes 3-21-05 Staff letter to parties 3-23-05 Staff docketed Agreement 4-11-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement Between Qwest Corp. and DIECA Communications Inc. dba Covad Communications Company” (QPP)	None	Agreement given to Staff for informational purposes 3-21-05 Staff letter to parties 3-23-05 Staff docketed Agreement 4-1-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
“Commercial	None	Agreement given to	Consolidate with

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
Agreement Between Qwest Corp. and CAT Communications International, Inc.” (QPP)		Staff for informational purposes 3-21-05 Staff letters to parties 3-23-05; 3-31-05 Staff docketed Agreement 4-12-05	Docket Nos. T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement Between Qwest Corp. and Prime Time Ventures LLC” (QPP)	None	Agreement given to Staff for informational purposes 3-21-05 Staff letter to parties 3-23-05 Staff docketed Agreement 4-11-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement between Qwest Corp. and 1-800-Reconex Inc. dba USTel” (QPP)	None	Agreement given to Staff for informational purposes 1-24-05 Staff letter to parties 1-27-05 Staff docketed Agreement 4-11-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement between Qwest Corp. and Ionex Communications North, Inc.”	None	Agreement given to Staff for informational purposes 4-4-05 Staff letter to parties 4-5-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540

Attachment A

QWEST QPP AGREEMENTS

Revised April 19, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
(QPP)		Staff docketed Agreement 4-11-05	
"Commercial Agreement between Qwest and Tel West Communications, LLC"	None	Agreement given to Staff for informational purposes 2-15-05 Staff letter to parties 2-18-05 Staff docketed Agreement 4-11-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540