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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

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WILLIAM A. MUNDELL  
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IN THE MATTER OF US WEST COMMUNI-  
CATIONS, INC.'S COMPLIANCE WITH  
§ 271 OF THE TELECOMMUNICATIONS  
ACT OF 1996

Docket No. T-00000A-97-238

**COX ARIZONA TELCOM, L.L.C.'S  
BRIEF ON SUBLOOP IMPASSE ISSUES**

Cox Arizona Telcom, L.L.C. ("Cox") submits its brief addressing workshop  
impasse issues on subloop access.

**A. Overview**

Subloop access presents some of the most important and difficult issues in the 271  
docket. Adequate and timely access to subloops is critical to competition for residential  
tenants in apartment complexes and other multi-dwelling units ("MDUs") and for business  
customers in high rise office buildings and other multi-tenant environments ("MTEs").  
Subloop access also is a key to competition being available to the full range of residential  
and business consumers. For example, close to than 50% of residential customers in the  
Phoenix area are MDU tenants. If CLECs do not have prompt and adequate access to  
subloops, those customers may not enjoy the benefits of competition.

1 Subloop access has been complicated by a myriad of historical regulatory events,  
2 Qwest business practices and tariffs and a general lack of readily available information on  
3 MDUs/MTEs – all of which cloud the ability to identify: (i) what constitutes “inside wire”  
4 for a particular building or building complex; (ii) who owns the “inside wire”; (iii) where  
5 the demarcation point and minimum point of entry (“MPOE”) are located, etc. Qwest has  
6 attempted to marshal this uncertainty to its advantage on the issues surrounding subloop  
7 access. Qwest’s various proposals contemplate unacceptable delays to allow for investi-  
8 gation of inside wire ownership and other access issues. The lack of ready knowledge also  
9 makes it virtually impossible to order subloops from Qwest, through the Qwest OSS or  
10 otherwise. Such problems are the result of Qwest’s historical failures to keep proper  
11 records on ownership and access processes. Qwest does not face similar problems or  
12 delays in its access to similar facilities. CLECs should not be disadvantaged due to  
13 Qwest’s prior failings.

14 Cox also is concerned that the existing Qwest tariffs will only act to perpetuate  
15 problems with CLEC access to subloops. Qwest’s Cable, Wire and Service Termination  
16 Policy [Exchange and Network Services Tariff, Section 2.8 (“Qwest Tariff”)], provides  
17 several options for new facilities to MTEs and campus properties. Some of those options  
18 will act to hurt CLEC access to subloop and potentially increase the cost of that access.  
19 Qwest needs to modify that tariff to ensure that all new cable facilities to MTEs and  
20 campus properties (as well as all major reconfigurations of Qwest entrance facilities at  
21 such locations) will have the MPOE and the demarcation point located at the same single  
22 location near the edge of the property.

23 Cox believes that Qwest’s ability to meet its Section 271 obligations for subloop  
24 access depends on a long term solution that ensures MDUs and MTEs are fully opened to  
25 competition. This will require a commitment to a series of actions by Qwest, starting with  
26

1 (but not limited to) adequate SGAT language. It continues with proper tariffs and  
2 reallocation of “inside wire” ownership to avoid the perpetuation of the existing barriers to  
3 adequate CLEC subloop access. Indeed, CLECs must have equal access to subloops, both  
4 in timing and location, to be able to compete for the majority of customers. Without such  
5 an overall strategy, most of the telecommunications market in Arizona will not be  
6 irreversibly opened to competition.

7 **B. Access to Subloops is Critical to Competition**

8 As a technical matter, access to subloops is critical to competition – particularly the  
9 facilities-based competition often encouraged by this Commission. The subloop is the  
10 piece of the access puzzle that cannot be easily duplicated by CLECs. Because the subloop  
11 can be located on private property, duplication may require serious disruption of that  
12 property – something the property owner is unlikely to allow.

13 The FCC has defined subloops “as portions of the loop that can be accessed at  
14 terminals in the incumbent’s outside plant.”<sup>1</sup> Under the FCC’s UNE Remand Order,  
15 incumbent LECs such as Qwest are required to provide competitive carriers with access to  
16 subloops. In that order, the FCC found that “lack of access to unbundled subloops  
17 materially diminishes a requesting carrier’s ability to provide services that it seeks to  
18 offer.”<sup>2</sup> In a general way, the FCC found that access to subloops is an important means to  
19 implementing the goals of the Act:

20  
21 Access to unbundled subloop elements allows competitive LECs to  
22 self-provision part of the loop, and thus, over time, to deploy their  
23 own loop facilities, and to eventually develop competitive loops. If  
requesting carriers can reduce their reliance on the incumbent by

24 <sup>1</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications*  
25 *Act of 1996, CC Docket No. 96-98, Third Report and Order, FCC 99-238 (Nov. 5, 1999) (“UNE Remand*  
*Order”) at ¶ 206.*

26 <sup>2</sup> *UNE Remand Order at ¶ 205.*

1 interconnecting their own facilities closer to the customer, their  
2 ability to provide service using their own facilities will be greatly  
3 enhanced, thereby furthering the goal of the 1996 Act to promote  
4 facilities-based competition.<sup>3</sup>

5 Similarly, the FCC found that access to subloops is important for the development  
6 of CLEC facilities – something this Commission has supported:

7 We also conclude that access to subloop elements is likely to be the  
8 catalyst that will allow competitors, over time, to deploy their own  
9 complimentary subloop facilities, and eventually to develop competi-  
10 tive loops. Lack of access to subloops discourages competitive  
11 LECs from attempting to combine their own feeder plant with the  
12 incumbents' distribution plant to minimize their reliance on the  
13 incumbent's facilities.<sup>4</sup>

14 More specifically, the FCC stated that greater efficiency will be promoted by required  
15 unbundling of subloops because a requesting carrier "will not have to buy the entire loop in  
16 order to connect its own facilities with wiring on the customer premises."<sup>5</sup>

17 As a practical matter, access to subloops is critical to Cox's ability to provide  
18 competitive services to the multitude of residential and business tenants. Cox uses a hybrid  
19 fiber-coaxial ("HFC") network to provide competitive telephony service to end user  
20 customers. The FCC has provided some additional specific guidance in its recent MTE  
21 Order,<sup>6</sup> which more explicitly described the importance of access to subloops at an MTE.

22 <sup>3</sup> *UNE Remand Order* at ¶ 219.

23 <sup>4</sup> *UNE Remand Order* at ¶ 205.

24 <sup>5</sup> *UNE Remand Order* at ¶ 212.

25 <sup>6</sup> *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, WT*  
26 *Docket No. 99-217; Implementation of the Local Competition Provisions of the Telecommunications Act of*  
*1996, CC Docket No. 96-98; Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning*  
*Connection of Simple Inside Wiring to the Telephone Network, CC Docket 88-57; First Report and Order*  
*and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and*  
*Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and*  
*Memorandum Opinion and Order in CC Docket No. 88-57 (rel. October 25, 2000) ("MTE Order").*

1 In that order, the FCC defined MTEs to include “apartment buildings (rental, condomini-  
2 nium, or co-op), office buildings, office parks, shopping centers and manufactured housing  
3 communities.”<sup>7</sup> The FCC stressed just how significant access to MTEs is to assuring  
4 robust competition:

5 Attention to the unique issues and challenges affecting access  
6 to MTEs is important because a substantial proportion of both  
7 residential and business customers nationwide are located in such  
8 environments. Thus, an absence of widespread competition in MTEs  
9 would insulate incumbent LECs from competitive pressures and  
10 deny facilities-based competitive carriers the ability to offer their  
11 services in a sizeable portion of local markets, thereby jeopardizing  
12 full achievement of the benefits of competition.<sup>8</sup>

13 The FCC made a clear determination that incumbent LECs such as Qwest have used  
14 the MTE chokepoint as a means to severely inhibit competition. In the MTE Order the  
15 FCC found that “incumbent LECs are using their control over on-premises wiring to  
16 frustrate competitive access in multitenant buildings.”<sup>9</sup> Further, FCC found “that incum-  
17 bent LECs possess market power to the extent their facilities are important to the provision  
18 of local telecommunications services in MTEs.”<sup>10</sup> Finally, the FCC recognized that “[i]n  
19 the absence of effective regulation, they therefore have the ability and incentive to deny  
20 reasonable access to these facilities to competing carriers.”<sup>11</sup>

21 The effectiveness of Cox’s HFC deployment is dependent upon access to Qwest’s  
22 subloop facilities. Specifically, Cox often requires access to certain parts of the subloop

23 <sup>7</sup> *MTE Order* at ¶ 2. MTEs and multiple dwelling units (“MDUs”) have been used synonymously  
24 in these proceedings, although AT&T notes that technically the term MTE is more expansive. The access  
25 that is the subject of the issues set forth in this brief relates to the MTE’s in its most expansive sense.

26 <sup>8</sup> *MTE Order* at ¶ 3.

<sup>9</sup> *MTE Order* at ¶ 6.

<sup>10</sup> *MTE Order* at ¶ 11.

<sup>11</sup> *Id.*

1 referred to as “on-premises wiring,” wiring on a customer premises, which may be owned  
2 or controlled by Qwest. Cox’s experience with Qwest – particularly with respect to  
3 “campus wiring” [see Exhibit 3 Cox 1] – raises significant concern about Qwest’s ability to  
4 afford access to subloops as required by law and, accordingly, as set forth below, creates  
5 doubt as to whether Qwest has satisfied its obligations under the Section 271 checklist.

6 **C. SGAT Language Issues**

7 Several specific issues have been set forth regarding SGAT provisions. Cox  
8 believes that the SGAT presents only a portion of the necessary elements Qwest must  
9 satisfy to meet Qwest’s subloop access obligations. Cox has reviewed ATT’s most recent  
10 proposal for SGAT language concerning subloop access (Section 9.3 – Sub-loop  
11 Unbundling) and supports that proposal over the Qwest proposal. Cox also generally  
12 concurs with the positions ATT has taken on the six specific SGAT subloop provision  
13 impasse issues in the multistate 271 proceeding and that (apparently) have been identified  
14 as impasse issues in the Arizona 271 proceeding. As such, Cox will not repeat those  
15 positions here.

16 **D. Qwest’s Cable, Wire and Service Termination Policy Must be**  
17 **Modified**

18 Under its existing tariff, Qwest serves new MTEs primarily through one of two  
19 means – “Option 1” or “Option 3” wiring. Qwest Tariff, Section 2.8.D. In the case of  
20 Option 1 wiring, the building owner owns and controls the on-premises wire. As a result,  
21 Qwest may not legally deny a competitor access to wiring at the premises because there are  
22 no Qwest-owned or controlled facilities used when the competitor directly connects to the  
23 building wire. Because there are no unbundled network elements involved, there is  
24 nothing to be negotiated with Qwest. In the case of Option 3 wiring, Qwest asserts control,  
25 if not ownership, of at least a portion of the wiring on the premises that may be used by the  
26

1 connecting carrier. Because Qwest controls a portion of the facilities, the connecting  
2 carrier may in turn use some Qwest-controlled assets that must be unbundled as subloop  
3 unbundled network elements. Option 3 creates many of the same difficulties with subloop  
4 access identified in the workshops.

5 To avoid the continued proliferation of "Option 3" MTEs and the related problems  
6 that effectively prohibit CLECs from non-discriminatory access to subloops, Qwest should  
7 modify its tariff to eliminate any option that would allow an MTE – either a new MTE or  
8 an existing MTE undergoing a significant reconfiguration/upgrade of entrance facilities –  
9 to have a demarcation point anywhere other than at the MPOE. The Qwest tariff also  
10 should require that the MPOE be placed at the edge of the MTE property to allow easy and  
11 non-disruptive access by CLECs wanting to serve the MTE tenants.

12 Modifying the Qwest tariff on a going-forward basis is only a part of the solution.  
13 The Commission should make clear that, upon request of the MTE owner, Qwest must  
14 create a single demarcation point at the MPOE and relinquish ownership of the wire on the  
15 customer side of the demarcation point. This requirement incorporates the FCC's recent  
16 clarification of this ILEC obligation. In the *MTE Order*, the FCC stated:

17 [I]n all multiunit premises, the incumbent carrier must move the  
18 demarcation point to the MPOE upon the premises owner's  
19 request . . . . We believe that it would impede the development of  
20 facilities-based competition if a carrier could refuse a premises  
21 owner's request to move the demarcation point to the property line in  
order to prevent the connection of inside wiring to a competitive  
carrier.<sup>12</sup>

22 The key issue here is the charge to the MTE owner for Qwest's relinquishment of  
23 the wire. Cox believes that when an MTE owner exercises its option to have Qwest move  
24 the demarcation point to the MPOE at the property line, the wiring and facilities to be  
25

26 <sup>12</sup> *MTE Order* at ¶ 54.

1 relinquished to Qwest should be priced at residual value. Residual value should be defined  
2 as the initial cost born by Qwest (assuming it claims and proves ownership of the  
3 wire/facilities) less accounted depreciation up to the time of conveyance. In some  
4 instances, where the entrance facilities run more than 300 feet, the MTE owner may have  
5 already paid for some or all the costs. [See Qwest Tariff, Section 2.8.B.8] Moreover,  
6 under the Qwest tariff, the MTE owner also paid for the provision, maintenance and repair  
7 of adequate space and supporting structure for the wire/cable facilities. [Qwest Tariff,  
8 Sections 2.8.B.3, .4] These charges include such costs as trenching, replacing concrete/  
9 asphalt/landscape, conduit and the like. In such instances, Qwest arguably may owe the  
10 MTE owner if Qwest depreciated those assets because Qwest never paid for them.  
11 Moreover, to the extent Qwest believes it should recover its historic costs for maintenance  
12 of those facilities, Qwest has already done so as operating expenses.<sup>13</sup>

13 As Cox indicated above, ongoing adequate access to subloop elements such as  
14 campus wire cannot be assured through some SGAT language. Rather, Qwest must take  
15 actions that will create a situation where CLEC access to MTE facilities is guaranteed on a  
16 going-forward basis. This proposal does this. Without such manifest changes to the  
17 underlying scheme for MTE facilities – and access thereto – Cox does not believe 271  
18 obligations are met.

19 **E. Other Subloop Issues**

20 There have been three other more “general” subloop issues identified as Subloop  
21 Impasse Issues in Arizona. Cox is most concerned with the issue of whether the rate for  
22 subloop facilities on a campus, including cabling between buildings, should be the same as  
23

24  
25 <sup>13</sup> This approach is similar to the rules being proposed by the California Public Utilities  
26 Commission regarding acquisition of premises wire by an MDU owner See [http://www.cpuc.ca.gov/WORD\\_PDF/RULINGS/5535.doc](http://www.cpuc.ca.gov/WORD_PDF/RULINGS/5535.doc).

1 distribution subloop or priced as a separate elements. Under the 1996 Act, Qwest needs to  
2 provide subloops at rates that are just, reasonable and nondiscriminatory. However, Cox  
3 disagrees with Qwest's past demands – and apparent position here – that Cox must pay for  
4 the entire distribution portion of the loop even if it only uses a small portion of those  
5 distribution facilities. [See Exhibit 3 Cox 1] Qwest's recent filings in the UNE Pricing  
6 Docket (ACC Docket No. T-00000A-00-194) has done nothing to allay this problem.  
7 Qwest has set forth subloop pricing for three things: feeder loop, distribution loop and  
8 "intrabuilding cable" loop. Qwest also has used this breakdown of subloop elements in its  
9 most recent SGAT language. In general, intrabuilding cable originates at a terminal,  
10 typically near the MPOE, and terminates at a demarcation point at or near customer  
11 premises equipment. Intrabuilding cable is located on a customer premises and may  
12 traverse riser and conduit on its journey to the end user's telephone equipment. However,  
13 Cox understands that Qwest specifically excludes from this description of "intrabuilding  
14 cable" cable that may exist on a customer's premises that may extend from or between  
15 buildings in a campus setting. [See Qwest Proposed SGAT, Section 9.3.2.1.4] Instead,  
16 Qwest considers such "intra-campus" wiring merely as a type of distribution facility – no  
17 different than the cable from an FDI through a neighborhood to a customer's home.

18 Qwest's distinction is wholly arbitrary and not supported at law. In fact, the FCC  
19 reflects a more commonsense approach when it defines "inside-wire" in the UNE Remand  
20 order:

21 Although inside wire typically consists of junction and utility  
22 boxes, riser cable and horizontal distribution wiring within and  
23 apartment building, it can also include the loop facility within a  
24 campus, a commercial park, or a garden apartment complex. We  
25 note that Teligent prefers the term "intrabuilding wiring," to  
26 emphasize that the plant in question is not always inside the  
customer premises, but may, especially in multiunit buildings, exist  
primarily within the landlord's, rather than the subscriber's premises.

1 Yet even the term “intrabuilding wire may suggest limitations that do  
2 not apply in some situations because “inside” wire is often out of  
3 doors, as in the case in garden apartments ad campuses, among other  
4 places.”<sup>14</sup>

5 Cox is concerned about the anticompetitive impact of Qwest’s apparent pricing  
6 approach. Cox’s proposal above regarding the relocation of the demarcation/MPOE and  
7 the modification of Qwest tariffs eliminates some of the mischief on a going forward basis.  
8 It is nonsensical for Cox or any other CLEC to pay the full distribution loop price for a  
9 small portion of that distribution loop. However, until Qwest changes its position on  
10 subloop pricing in the UNE Pricing Docket, Cox does not believe Qwest meets its Section  
11 271 obligations for subloop access.

#### 12 CONCLUSION

13 At this point, the entire Qwest process, from its tariffs to SGAT provisions,  
14 effectively precludes CLECs from obtaining access to subloops under rates, terms and  
15 conditions that are just, reasonable and nondiscriminatory. Qwest has a tariff scheme in  
16 place that will perpetuate the problem. It also attempts to hide behind its historic failure to  
17 adequately track ownership of “inside wire” to create an unworkable process for CLEC  
18 access. Finally, Qwest continues to propose to price subloops at rates that are not just and  
19 reasonable. As such, Qwest does not yet meet its obligations under Section 271 of the Act  
20 with respect to access to subloops.

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<sup>14</sup> *UNE Remand Order* at ¶ 170.

**ROSHKA HEYMAN & DEWULF, PLC**  
TWO ARIZONA CENTER  
400 NORTH 5TH STREET - SUITE 1000  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1 Dated: May 21, 2001.

2 **COX ARIZONA TELCOM. L.L.C.**

3  
4 By: 

5 Michael W. Patten  
6 ROSHKA HEYMAN & DEWULF, PLC  
7 Two Arizona Center  
8 400 North 5th Street, Suite 1000  
9 Phoenix, Arizona 85004  
10 (602) 256-6100

11 **ORIGINAL and TEN (10) COPIES**  
12 filed May 21, 2001, with:

13 Docket Control  
14 ARIZONA CORPORATION COMMISSION  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007

17 **COPIES** hand-delivered May 21, 2001, to:

18 Lyn A. Farmer, Esq.  
19 Chief Administrative Law Judge  
20 Hearing Division  
21 ARIZONA CORPORATION COMMISSION  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007

24 Maureen Scott, Esq.  
25 Legal Division  
26 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Mark DiNunzio  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

1 Matt Rowell  
2 Utilities Division  
3 ARIZONA CORPORATION COMMISSION  
4 1200 West Washington Street  
5 Phoenix, Arizona 85007

6 **COPIES** mailed May 21, 2001, to:

7 Richard S. Wolters, Esq.  
8 AT&T COMMUNICATIONS, INC. OF THE MOUNTAIN STATES  
9 1875 Lawrence Street, Room 1575  
10 Denver, Colorado 80202

11 Joan S. Burke, Esq.  
12 OSBORN & MALEDON  
13 2929 North Central Avenue, Suite 2100  
14 Post Office Box 36379  
15 Phoenix, Arizona 85067-6379  
16 *Counsel for AT&T Communications of the Mountain States;*  
17 *and TCG Phoenix*

18 Andrea P. Harris  
19 ALLEGIANCE TELECOM, INC.  
20 P.O. Box 2610  
21 Dublin, California 94568

22 Diane Bacon  
23 Legislative Director  
24 COMMUNICATIONS WORKERS OF AMERICA  
25 5818 North 7th Street, Suite 206  
26 Phoenix, Arizona 85014-5811

19 K. Megan Doberneck, Esq.  
20 COVAD COMMUNICATIONS COMPANY  
21 7901 Lowry Boulevard  
22 Denver, Colorado 82030

23 Nigel Bates  
24 ELECTRIC LIGHTWAVE, INC.  
25 4400 N.E. 77th Avenue  
26 Vancouver, Washington 98662

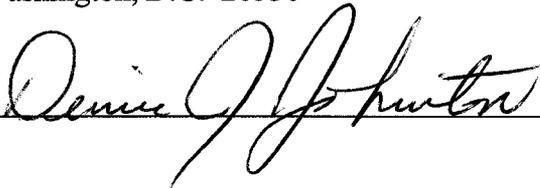
**ROSHKA HEYMAN & DEWULF, PLC**

TWO ARIZONA CENTER  
400 NORTH 5TH STREET - SUITE 1000  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

- 1 Karen L. Clauson  
ESCHELON TELECOM, INC.  
2 730 2nd Avenue South, Suite 120  
Minneapolis, Minnesota 55402
- 3 Michael M. Grant, Esq.  
4 Todd C. Wiley, Esq.  
GALLAGHER & KENNEDY, P.A.  
5 2575 East Camelback Road  
Phoenix, Arizona 85016-9225  
6 *Counsel for Electric Lightwave, Inc.*
- 7 Mark N. Rogers  
8 EXCELL AGENT SERVICES, L.L.C.  
2175 West 14th Street  
9 Tempe, Arizona 85281
- 10 Gena Doyscher  
GLOBAL CROSSING LOCAL SERVICES, INC.  
11 1221 Nicollet Mall  
12 Minneapolis, Minnesota 55403-2420
- 13 Thomas F. Dixon  
MCI WORLD COM, INC.  
14 707 17th Street, Suite 3900  
15 Denver, Colorado 80202
- 16 Thomas H. Campbell, Esq.  
LEWIS & ROCA L.L.P.  
17 40 North Central Avenue  
Phoenix, Arizona 85004  
18 *Counsel for MCI WorldCom, Inc.; and*  
*Rhythms Links fka ACI Corp.*
- 19 Daniel Waggoner, Esq.  
20 DAVIS WRIGHT TREMAINE  
2600 Century Square  
21 1501 Fourth Avenue  
22 Seattle, Washington 98101-1688  
*Counsel for NEXTLINK Arizona, Inc.*
- 23 Douglas H. Hsiao, Esq.  
24 RHYTHMS LINKS INC.  
6933 South Revere Parkway  
25 Englewood, Colorado 80112  
26 *Counsel for Rhythms Links fka ACI Corp.*

**ROSHKA HEYMAN & DEWULF, PLC**  
TWO ARIZONA CENTER  
400 NORTH 5TH STREET - SUITE 1000  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

- 1 Scott Wakefield, Esq.  
RESIDENTIAL UTILITY CONSUMER OFFICE  
2 2828 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004
- 3  
4 Stephen H. Kukta, Esq.  
SPRINT COMMUNICATIONS Co., L.P.  
8150 Gateway Drive, 7th Floor  
5 San Mateo, California 94404-2737
- 6  
7 Andrew O. Isar  
Director, Industry Relations  
TELECOMMUNICATIONS RESELLERS ASSOCIATION  
8 4312 92nd Avenue, N.W.  
Gig Harbor, Washington 98335
- 9  
10 Charles Steese, Esq.  
QWEST CORPORATION  
1801 California Street, Suite 5100  
11 Denver, Colorado 80202
- 12  
13 Timothy Berg, Esq.  
FENNEMORE CRAIG, P.C.  
3033 North Central Avenue, Suite 2600  
14 Phoenix, Arizona 85012-2913  
*Counsel for Qwest Corporation*
- 15  
16 Mark P. Trinchero, Esq.  
DAVIS WRIGHT TREMAINE L.L.P.  
1300 S.W. Fifth Avenue, Suite 2300  
17 Portland, Oregon 97201
- 18  
19 M. Andrew Andrade  
5261 South Quebec Street, Suite 150  
Greenwood Village, Colorado 80111  
20 *Counsel to TESS Communications, Inc.*
- 21  
22 Joyce Hundley, Esq.  
Antitrust Division  
UNITED STATES DEPARTMENT OF JUSTICE  
23 1401 H Street, N.W., Suite 8000  
Washington, D.C. 20530

24  
25   
26