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MARC SPITZER  
Chairman  
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Arizona Corporation Commission

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AZ CORP COMMISSION  
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IN THE MATTER OF INVESTIGATION OF  
THE COST OF TELECOMMUNICATIONS  
ACCESS

DOCKET NO. T-00000D-00-0672

**QWEST CORPORATION'S  
RESPONSE TO AT&T'S MOTION  
TO COMPEL**

INTRODUCTION

Qwest Corporation hereby responds to AT&T's motion to compel. AT&T's data requests seek information pertaining to interexchange services that is wholly irrelevant to this docket, which was established to determine whether current access charges reflect the cost of access. Furthermore, AT&T seeks data from Qwest Corporation over which Qwest Corporation does not have custody or control because such data is in the custody and control of affiliates, which are separate and distinct corporate entities. Finally, Qwest Corporation would suffer undue burden if required to answer many of AT&T's requests because not only is the data requested irrelevant and not within Qwest Corporation's custody or control, the documents from which such data would be developed are voluminous and would require an independent analysis and study to produce complete responses.

DISCUSSION

**1. The Costs of Interexchange Access Services Are Irrelevant To This Docket.**

In its motion, AT&T admits that the majority of its data requests and the information sought therein does not relate to Qwest access services and concern

1 interexchange services. Specifically, data requests 01-002, 01-004, 01-005, 01-006, 01-  
2 007, 01-009, 01-010, 01-012, 01-013, 01-014, 01-015, 01-016, 01-017, 01-018, 01-019,  
3 01-020, 01-021, 01-022, 01-023, 01-025, 01-026, 01-027, and 01-028 request data on  
4 interexchange services, interLATA charges, and other services wholly unrelated to access  
5 services. See AT&T Data Requests, attached as Exhibit A. AT&T argues that such data  
6 is relevant to the any decision the Commission may make on restructuring or setting rates  
7 for intrastate access charges charged by Qwest Corporation to service providers such as  
8 AT&T. AT&T's assertions are in error.

9       The scope of this docket is only to examine whether "access charges currently in  
10 effect reflect the cost of access." See Procedural Order, November 18, 2003, p. 1; see  
11 also Request for an Investigatory Docket Regarding the Costs of Access, December 5,  
12 2000 ("Chairman Kunasek requested that a docket be opened to investigate the costs of  
13 telecommunications access to determine if access charges currently in effect for Arizona  
14 Telecommunications utilities reflect the cost of access."). Qwest Corporation's costs  
15 incurred in providing interexchange services and the authorized rates it charges for these  
16 services are dependent on factors other than access charges.

17       The crux of AT&T's arguments is that without such information, the Commission  
18 will be unable to set a rate for intrastate access charges that will ensure Qwest  
19 Corporation cannot impose a price squeeze on long distance providers (such as AT&T),  
20 after market entry by a separate affiliate (holding a separate CC&N) providing long  
21 distance service. Without any factual proof of a price squeeze, AT&T predicts that a rate  
22 of \$.05 per minute would result in a price squeeze. First, it is clear that AT&T is  
23 conducting extensive discovery based upon a rate that is not a rate for access service. In  
24 any event, Qwest Corporation believes that other carriers providing interexchange  
25 services in Arizona have plans with similar rates. AT&T has not filed a complaint  
26 challenging any of these rates charged by other carriers nor filed a complaint challenging

1 QCC's or QLDC's rates. Such proceedings would be the appropriate forum for  
2 challenging these rates. Second, such rates are not an indicator of the cost of access,  
3 which is the focus of this docket.

4 Further, AT&T's argument fails to take into account that statutory protections  
5 already exist to prevent exactly the results AT&T alleges. Section 272 of the  
6 Telecommunications Act requires that any organization providing long distance services  
7 must be a separate affiliate from local exchange carriers such as Qwest Corporation. 47  
8 U.S.C. § 272(a). The separate affiliates must operate independently and maintain  
9 separate financial records, must have separate officers, directors, and employees, and  
10 must transact any business at arms length with the operating company, subject to public  
11 inspection of transaction documents. 47 U.S.C. § 272(b). The Act further provides that  
12 the operating company must not discriminate between the affiliate and any other entity in  
13 the provisions or procurement of services. 47 U.S.C. § 272(c). The Act specifically  
14 creates an obligation to charge equal rates between affiliates and non-affiliated entities.  
15 47 U.S.C. § 272(e). Under the Act, Qwest Corporation is obligated to provide access at  
16 the same rate to both affiliates and non-affiliates.

17 Retail rates ultimately charged to end users by the affiliates and non-affiliates are  
18 not indicative of the costs of access; they are independently calculated after a cost-based  
19 access charge is imposed on the affiliate or non-affiliate. Any such retail rate would also  
20 include, in addition to access charges, all other charges and tariffs along with a  
21 reasonable markup.

22 It cannot be overlooked that any price squeeze issues remain speculative. Price  
23 squeeze issues that might exist in the future are expressly not a subject of this docket, i.e.,  
24 whether Qwest Corporation's current access charges reflect cost of access.

25 Although Chairman Spitzer may have found AT&T's concerns about the potential  
26 for a price squeeze of interest, his request for an expedited analysis of Qwest

1 Corporation's access costs did not expand the scope of this proceeding to examine  
2 interexchange costs and charges; nor did it change the parameters by which any access  
3 charge is calculated and compel access charges to be calculated below actual cost.  
4 Accordingly, the scope of these proceedings has not been altered, nor does it reach costs  
5 or charges for interexchange services.

6 Finally, AT&T's argument that because it has offered testimony regarding a  
7 "hypothetical" price squeeze, this should be sufficient to broaden the scope of these  
8 proceedings is also unreasonable. To allow parties who submit irrelevant testimony, in  
9 another docket, to alter the scope of Commission proceedings would open the door to  
10 unlimited alteration and expansion of proceedings before the Commission.

11 **2. Qwest Corporation Is Not Required To Produce Information Regarding**  
12 **Affiliates.**

13 Pursuant to the Arizona Civil Rules of Procedure, a party is only obligated to  
14 produce information, whether through interrogatories or through requests for production,  
15 that are available or in the control of the party to whom the request is directed. *See*  
16 ARCP 33(a) (the party to whom the request is directed "shall furnish such information as  
17 is available to the party."); ARCP 34(a) (a party may request production of documents  
18 "which are in the possession, custody, or control of the party upon whom the request is  
19 served."). The Telecommunications Act, and specifically Section 272, does not change,  
20 modify, or expand the scope of discovery in this proceeding.

21 AT&T has requested data from Qwest Corporation that is data held, controlled,  
22 and concerning Qwest Corporation affiliates. AT&T has requested data from and  
23 regarding affiliates in data requests 01-002, 01-003, 01-004, 01-005, 01-007, 01-008, 01-  
24 009, 01-010, 01-011, 01-012, 01-013, 01-017, 01-019, 01-020, 01-021, 01-022, 01-023,  
25 01-025, 01-026, 01-027, and 01-028. AT&T mischaracterizes the Telecommunications  
26 Act as forcing Qwest Corporation to produce data regarding its affiliates as a result of a

1 misguided and overly broad, analysis of Section 272. AT&T argues that Section 272  
2 mandates that in this proceeding, more specifically in discovery conducted in this  
3 proceeding, Qwest Corporation must produce data from affiliates that are not parties to  
4 the proceeding in order to determine whether the access charges imposed by Qwest  
5 Corporation, not any affiliate, reflect the cost of providing access incurred by Qwest  
6 Corporation. AT&T asserts that any arguable jurisdiction Section 272 retains for states  
7 provides them with the power to force Qwest Corporation to provide such data,  
8 specifically data over which Qwest Corporation has no control, from a separate corporate  
9 affiliate in response to discovery requests under limited proceedings on limited issues that  
10 do not involve that affiliate. AT&T's arguments stretch the applicability of Section 272  
11 beyond reason and any known legal principle.

12         Section 272 provides safeguards against anticompetitive practices by mandating  
13 corporate separation between Qwest Corporation and its affiliates. 47 U.S.C. § 272. The  
14 safeguards provided require Qwest Corporation to maintain complete financial and  
15 structural separation from affiliates. 47 U.S.C. § 272(b). The mandates for corporate  
16 separation render Qwest Corporation unable to provide the information requested as a  
17 result of such corporate separation. Qwest Corporation simply cannot control or direct  
18 such affiliates.

19         Section 272(d), while maintaining some level of state authority for review of  
20 certain issues subject to federal jurisdiction (customarily related to issues within a state  
21 and normally subject to state regulation), does not provide an obligation for Qwest  
22 Corporation to produce data from its affiliates in this hearing and related discovery.  
23 Section 272(d) requires Qwest Corporation, with its affiliates, to provide audits to  
24 demonstrate compliance with Section 272 as a whole. Section 272(d) does not create an  
25 affirmative obligation for Qwest Corporation to maintain records, or maintain control of  
26 data in those records, of separate corporate affiliates.

1 AT&T asserts that the obligations created by Section 272(d) create an affirmative  
2 duty for Qwest Corporation to provide affiliate data in this proceeding. AT&T is wrong.  
3 Section 272(d) requires that Qwest Corporation provide information, along with its  
4 affiliates, for an audit on a biennial basis. 47 U.S.C. § 272(d). The statute does not  
5 provide an affirmative duty upon Qwest Corporation to maintain data from the same  
6 affiliates the Act mandates to operate separately and distinct from Qwest Corporation.  
7 *Compare* 47 U.S.C. § 272(d) with 47 U.S.C. § 272(b). The only aspect of corporate  
8 identity shared between Qwest Corporation and its Affiliates are shareholders. All other  
9 aspects must remain separate and distinct pursuant to Section 272 (b).

10 The separate corporate affiliates are the proper parties to whom AT&T must direct  
11 data requests regarding those affiliates' data. The fact that corporate affiliates are not  
12 parties to this proceeding does not create any duty upon Qwest Corporation to produce  
13 the affiliate data. Further, in so much as any affiliates do not impose charges for access,  
14 such data, as discussed above, is irrelevant to this proceeding.

15 3. **Qwest Corporation Is Not Required To Produce Data Where Producing The**  
16 **Data Is Unduly Burdensome Or Requires A Special Study Or Analysis**

17 Discovery may be limited where the "discovery is unduly burdensome or  
18 expensive, given the needs of the case, the amount in controversy, limitations on the  
19 parties' resources, and the importance of the issues at stake in the litigation." ARCP  
20 26(b)(1)(iii); *see also, State Farm Mutual Automobile Ins. Co. v. Superior Court, County*  
21 *of Maricopa*, 167 Ariz. 135, 139 (App. 1991). This is especially true, where, as here,  
22 AT&T is seeking massive compilations of data and special analysis of that data on issues  
23 not within the scope of this proceeding, and/or data held by separate corporate entities  
24 over which Qwest Corporation has no control.

25 Qwest Corporation has objected to seven out of the twenty-eight data requests on  
26 the basis that the requests are overly broad and unduly burdensome. Qwest objected to

1 data requests 01-002, 01-006, 01-017, 01-020, 01-023, 01-027, 01-028 on this basis, as  
2 well as the other grounds articulated in this response. Of the seven requests, Qwest  
3 Corporation objected to, all seven requests seek information regarding interexchange  
4 services, which is irrelevant for the reasons previously discussed. Further, six out of the  
5 seven requests ask for information and data of affiliates, which is not within the control  
6 or custody of Qwest Corporation.<sup>1</sup>

7 Data Request No. 01-002 seeks imputation studies, for the past eight years, for  
8 each toll service or package offered by Qwest Corporation in Arizona, including all  
9 filings regarding imputation for toll services made with the Commission. Such data is  
10 again irrelevant. The eight-year range for records requested is unduly broad and would  
11 impose an undue burden on Qwest Corporation. To the extent that this information is in  
12 the custody and control of Qwest Corporation affiliates, Qwest Corporation is not  
13 obligated to acquire such information from the separate corporate entities.

14 Data Request No. 01-006 requests information regarding billing and collection  
15 services provided to interexchange carriers. Such information is irrelevant to the cost of  
16 access. Qwest Corporation objected on the grounds that it would require a special study  
17 since the specific data and analysis of that data requested is not regularly maintained by  
18 Qwest Corporation. Qwest Corporation has already provided the data it has available and  
19 has provided its analysis of that data in response to AT&T. The special study would  
20 require the expenditure of significant expenses to provide AT&T information that is not  
21 the subject of this proceeding and would create an undue burden on Qwest Corporation.

22 Data Request No. 01-017 requests data on each local exchange end user customer  
23 served by Qwest Corporation over the past eight years and those customers presubscribed  
24 to toll services provided by Qwest Corporation or its affiliates. Coupled with the  
25 irrelevance of such data to this proceeding, and Qwest Corporation's lack of control or

26 <sup>1</sup> Only Data Request No. 01-006 did not seek information regarding affiliates.

1 custody over much of the data, compiling this information would create an undue burden  
2 on Qwest Corporation.

3 Data Request No. 01-020 seeks information regarding toll services offered by  
4 Qwest Corporation affiliates and the costs those affiliates incur in providing such  
5 services. Again, as discussed above, the toll service data is irrelevant to the cost of  
6 access and data on affiliates is not within the control and custody of Qwest Corporation,  
7 and would create an undue burden on Qwest Corporation.

8 Data Requests No. 01-020 and No. 01-027 request data on marketing costs per  
9 subscriber for both Qwest Corporation and its affiliate subscribers for intraLATA or  
10 interLATA services and the costs of marketing services paid by those affiliates.  
11 Marketing data is not relevant to the cost of access and data from affiliates is not within  
12 the custody or control of Qwest Corporation.

13 Data Request No. 01-028 requests data on each intraLATA toll service Qwest  
14 Corporation resold to affiliates. Toll service data is not relevant to the cost of access.  
15 Further, Qwest Corporation does not have custody or control over affiliate data.  
16 Producing irrelevant data on toll services, particularly where Qwest Corporation does not  
17 have custody or control over the data, would create an undue burden on Qwest  
18 Corporation.

19 **4. Consolidation Into the Price Cap Plan Renewal Docket Recognizes That the**  
20 **Issue is Not Whether, but How Switched Access Rates Will be Lowered**

21 Qwest Corporation has not opposed rate reductions for switched access charges,  
22 provided that such reductions occur in a revenue neutral manner.

23 In light of this recognition, AT&T's data requests regarding the cost of  
24 interexchange services are not only irrelevant, but unnecessary. The scope of this docket  
25 was to examine whether access charges currently in effect reflect the cost of access.  
26

1 AT&T's "price squeeze" issue is simply unrelated to the scope and intent of this  
2 proceeding, which is to ensure that access charges are lowered consistent with  
3 mechanisms and procedures outlined in the Arizona Constitution.

4  
5 CONCLUSION

6 A majority of AT&T's data requests, as discussed herein, are merely a fishing  
7 expedition that would expand these proceedings beyond its established scope. AT&T's  
8 assertion that it seeks to avoid a "price squeeze" when a Qwest Corporation affiliate  
9 provides long distance services is merely speculative. Qwest Corporation's obligations  
10 pursuant to the Telecommunications Act, particularly the corporate separation mandates  
11 contained in Section 272, render Qwest Corporation the improper party with whom to  
12 address any such price squeezes issues if they arise in the future. This proceeding is  
13 limited to whether the charges currently imposed for access reflect the cost of access.  
14 Accordingly, Qwest Corporation respectfully requests that AT&T's motion to compel be  
15 denied.

16 DATED this 15<sup>th</sup> day of December, 2003.

17 FENNEMORE CRAIG, P.C.

18 By   
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1 COPY hand-delivered this 15<sup>th</sup> day of December, 2003 to:

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17 COPY mailed this 15<sup>th</sup> day of December, 2003 to:

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21 Denver, CO 80202

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23 Rio Virgin Telephone and Cablevision  
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25 Estacada, OR 97023-000

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Phoenix, AZ 85007

San Carlos Apache Telecommunications Utility, Inc.  
PO Box 701  
245 S. Hill  
Globe, AZ 85502

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

South Central Utah Telephone Association, Inc.  
PO Box 226  
Escalante, UT 84726-000

- 1 Southwestern Telephone Co., Inc.  
PO Box 5158
- 2 Madison, WI 53705-0158
- 3 Centruytel  
PO Box 4065
- 4 Monroe, LA 71211-4065
- 5 Table Top Telephone Co, Inc.  
600 N. Second Avenue
- 6 Ajo, AZ 85321-0000
- 7 Citizens Utilities Rural Co. Inc.  
Citizens Communications Co. of Arizona
- 8 4 Triad Center, Suite 200  
Salt Lake City, UT 84180
- 9 Valley Telephone Cooperative, Inc.  
10 752 E. Malley Street  
PO Box 970
- 11 Willcox, AZ 85644
- 12 Copper Valley Telephone, Inc.  
PO Box 970
- 13 Willcox, AZ 85644
- 14 Verizon California Inc.  
One Verizon Way – CA500GCF
- 15 Thousand Oaks, CA 91362-3811
- 16 Midvale Telephone Exchange  
PO Box 7
- 17 Midvale, ID 83645
- 18 AT&T Communications of the Mountain States, Inc.  
1875 Lawrence Street, Room 1575
- 19 Denver, CO 80202
- 20 Navajo Communications Co., Inc.  
4 Triad Center, Suite 200
- 21 Salt Lake City, UT 84180
- 22 Brooks Fiber Communications of Tucson, Inc.  
201 Spear Street, 9<sup>th</sup> Floor
- 23 San Francisco, CA 94105
- 24 Caprock Telecommunications Corporation  
15601 N. Dallas Parkway, Ste. 700
- 25 Dallas, TX 75248
- 26

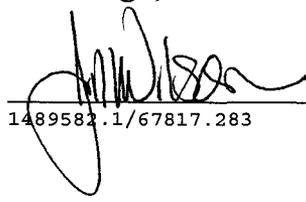
- 1 Citizens Long Distance Co.  
5600 Headquarters Drive
- 2 Plano, TX 75024
- 3 Citizens Telecommunications Co. of the White Mountains, Inc.  
4 Triad Center, Ste. 200
- 4 Salt Lake City, UT 84180
- 5 Max-Tel Communications, Inc.  
105 N. Wickham
- 6 PO Box 280
- 7 Alvord, TX 76225
- 8 Comm South Companies, Inc.  
2909 N. Buckner Blvd., Ste. 200
- 9 Dallas, TX 75228
- 10 MCI WorldCom Communications  
201 Spear Street, 9<sup>th</sup> Floor
- 11 San Francisco, CA 94105
- 12 Covad Communications Co.  
4250 Burton Drive
- 13 Santa Clara, CA 95054
- 14 MCIMetro  
201 Spear Street, 9<sup>th</sup> Floor
- 15 San Francisco, CA 94105
- 16 Cox Communications  
20401 N. 29<sup>th</sup> Avenue
- 17 Phoenix, AZ 85027
- 18 Metropolitan Fiber Systems of Arizona, Inc.  
201 Spear Street, 9<sup>th</sup> Floor
- 19 San Francisco, CA 94105
- 20 Digital Services Corp.  
211 N. Union Street, Ste. 300
- 21 Alexandria, VA 22314
- 22 Mountain Telecommunications Inc.  
2540 E. 6<sup>th</sup> Street
- 23 Tucson, AZ 85716
- 24 e.Spire  
131 National Business Parkway, Ste. 100
- 25 Annapolis Junction, MD 20701
- 26

- 1 North County Communications Corporation  
3802 Rosencrans, Ste. 485
- 2 San Diego, CA 92110
- 3 Electric Lightwave, Inc.  
4 Triad Center, Ste. 200
- 4 Salt Lake City, UT 84180
- 5 One Point Communications  
Two Conway Park
- 6 150 Field Drive, Ste. 300  
Lake Forest, IL 60045
- 7
- 8 Eschelon Telecom of Arizona, Inc.  
730 Second Avenue South, Ste. 1200  
Minneapolis, MN 55402
- 9
- 10 RCN Telecom Services, Inc.  
105 Carnegie Center  
Princeton, NJ 08540
- 11
- 12 Global Crossing Local Services, Inc.  
180 South Clinton  
Rochester, NY 14646
- 13
- 14 Reflex Communications, Inc.  
83 South King Street, Ste. 106  
Seattle, WA 98104
- 15
- 16 Global Crossing Telemangement, Inc.  
180 South Clinton  
Rochester, NY 14646
- 17
- 18 Rhythm Links, Inc.  
9100 E. Mineral Circle  
Englewood, CO 80112
- 19
- 20 Intermedia Communications, Inc.  
One Intermedia Way  
Tampa, FL 33647-1752
- 21
- 22 Sprint Communications Company, L.P.  
6860 W. 115<sup>th</sup>, MS:KSOPKD0105  
Overland Park, KS 66211
- 23
- 24 Jato Operating Corporation  
6200 Syracuse Way, Ste. 200  
Englewood, CA 80111
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- 26

- 1 TCG Phoenix  
1875 Lawrence Street, Room 1575
- 2 Denver, CO 80202
- 3 Level 3 Communications, LLC  
1025 Eldorado Blvd.
- 4 Broomfield, CO 80021
- 5 The Phone Company/Network Services of New Hope  
6805 Route 202
- 6 New Hope, PA 18938
- 7 Verizon Select Services Inc.  
6665 MacArthur Blvd, HQK02D84
- 8 Irving, TX 75039
- 9 IG2, Inc.  
80-02 Kew Garden Road, Ste. 5000
- 10 Kew Gardens, NY 11415
- 11 Winstar Wireless of Arizona  
1577 Spring Hill Road, 2<sup>nd</sup> Fl.
- 12 Vienna, VA 22182
- 13 Independent Network Services Corp. (FN)  
2600 N. Central Avenue, Ste. 1750
- 14 Phoenix, AZ 85004  
XO Arizona Inc.  
15 3930 Watkins, Ste. 200  
16 Phoenix, AZ 85034
- 17 360 Networks (USA) Inc.  
12101 Airport Way  
18 Broomfield, CO 80021
- 19 Main Street Telephone Company  
200 Ithan Creek Avenue
- 20 Villanova, PA 19085
- 21 Allcom USA  
2151 E. Convention Ctr Way, Ste. 207-A
- 22 Ontario, CA 91764-4483
- 23 Alliance Group Services, Inc.  
1221 Post Road East
- 24 Westport, CT 06880
- 25 Net-Tel Corporation  
11921 Freedom Drive
- 26 Reston, VA 20190

- 1 Nextlink Long Distance Svcs.  
3930 E. Watkins, Ste. 200  
2 Phoenix, AZ 85034
- 3 Archtel, Inc.  
1800 West Park Drive, Ste. 250  
4 Westborough, MA 01581
- 5 GST Net, Inc.  
4001 Main Street  
6 Vancouver, WA 98663
- 7 One Point Communications  
Two Conway Park, #300  
8 Lake Forest, IL 60045
- 9 Communique Telecommunications, Inc.  
4015 Guasti Road  
10 Ontario, CA 91761
- 11 Opex Communications, Inc.  
500 E. Higgins Rd., Ste. 200  
12 Elk Grove Village, IL 60007
- 13 Enhanced Communications Network, Inc.  
37 Winthrop Place  
14 Hazlet, NJ 07730
- 15 Pac-West Telecomm, Inc.  
1776 W. March Lane, #250  
16 Stockton, CA 95207
- 17 Ernest Communications, Inc.  
6475 Jimmy Carter Blvd., Ste. 300  
18 Norcross, GA 30071
- 19 RCN Telecom Services, Inc.  
105 Carnegie Center  
20 Princeton, NJ 08540
- 21 Single Billing Services, Inc.  
9550 Flair Drive, Ste. 409  
22 El Monte, CA 91731
- 23 Special Accounts Billing Group  
1523 Withorn Lane  
24 Inverness, IL 60067
- 25
- 26

- 1 Joan S. Burke  
Osborne Maledon  
2 2929 N. Central Ave., 21<sup>st</sup> Fl.  
Phoenix, AZ 85067
- 3  
4 Teligent Services, Inc.  
8065 Leesburg Pike, Ste. 400  
Vienna VA 22182
- 5  
6 Michael Patten  
Roshka, Heyman & DeWulf  
Two Arizona Center  
7 400 Fifth Street, Ste. 100  
Phoenix, AZ 85004
- 8  
9 Tess Communications, Inc  
12050 Pecos Street, Ste. 300  
Westminster, CO 80234
- 10  
11 Touch America  
130 N. Main Street  
Butte, MT 59701
- 12  
13 VYVX, LLC  
One Williams Center, MD 29-1  
Tulsa, OK 74172
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15 Western CLEC Corporation  
3650 131<sup>st</sup> Avenue SE, Ste. 400  
Bellevue, WA 98006
- 16  
17 Williams Local Network, Inc.  
One Williams Center, MD 29-1  
Tulsa, OK 74172
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19 Main Street Telephone Company  
200 Ithan Creek Avenue  
Villanova, PA 19085
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21 North County Communications Corporation  
3802 Rosencrans, #485  
San Diego, CA 92110

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