

OPEN MEETING ITEM



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

ORIGINAL



ARIZONA CORPORATION COMMISSION

DATE: June 28, 2005  
DOCKET NO: T-03514A-04-0540  
T-01051B-04-0540 et al.  
TO ALL PARTIES:

Arizona Corporation Commission  
**DOCKETED**  
JUN 28 2005

DOCKETED BY  
*KJ*

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Order on:

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC.  
(NEGOTIATED AMENDMENT TO INTERCONNECTION AGREEMENT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

July 7, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

July 12 and 13, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931

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*Brian C. McNeil*  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman  
4 WILLIAM A. MUNDELL  
5 MARC SPITZER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

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

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

**ORDER DENYING MOTION TO  
DISMISS**

15 **BY THE COMMISSION:**

16 On July 28, 2004, MCImetro Access Transmission Services, LLC ("MCI") filed an  
17 application with the Arizona Corporation Commission ("Commission") seeking approval of a  
18 negotiated amendment to an Interconnection Agreement between MCI and Qwest Corporation  
19 ("Qwest")<sup>1</sup>, for Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts,  
20 and for approval of a Qwest Platform Plus ("QPP") Master Services Agreement.

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

On August 13, 2004, Qwest filed a Request for Suspension of 30-Day Time Clock pursuant to  
A.A.C. R14-2-1508<sup>2</sup>. Qwest requested suspension of the applicable time clock rules so that the

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

<sup>2</sup> A.A.C. R14-2-1508 provides that amendments to interconnection agreements that are not rejected by the Commission within 30 days of filing will become effective.

1 Commission would have sufficient time to consider Qwest's Motion to Dismiss.

2 On August 17, 2004, AT&T Communications of the Mountain States, Inc. and TCG Phoenix  
3 ("AT&T") filed a Motion to Intervene and a Response to MCI's Application for Review and  
4 Approval and Qwest's Motion to Dismiss. AT&T argued that the QPP Agreement was properly  
5 submitted for the Commission's approval in accordance with the Telecommunications Act and  
6 Commission rules. AT&T also claimed that a number of other state commissions have required  
7 similar agreements to be submitted for approval. Accordingly, AT&T requested that Qwest's Motion  
8 to Dismiss be denied.

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

13 By Procedural Order issued August 25, 2004, Qwest's Motion for Suspension of the Time  
14 Clock was granted. The Procedural Order also granted intervention to both Qwest and AT&T<sup>3</sup>, and  
15 directed MCI and the Commission's Utilities Division Staff ("Staff") to file responses to Qwest's  
16 Motion to Dismiss by September 10, 2004<sup>4</sup>.

17 Staff filed its Response to Qwest's Motion to Dismiss on September 10, 2004. Staff agreed  
18 with MCI and AT&T that the QPP Agreement was properly submitted for the Commission's  
19 approval under Section 252 of the 1996 Act. Staff also asserts that the Commission retains  
20 jurisdiction to review the QPP Agreement under Section 271 of the 1996 Act, and that there is no  
21 federal preemption of the Commission's authority regarding this matter.

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

26 On October 4, 2004, MCI filed Supplemental Authority in the form of an Order by the Utah

27 <sup>3</sup> On October 29, 2004, AT&T filed a Motion to Withdraw as an intervenor in this proceeding. AT&T's request was  
28 granted by Procedural Order issued November 10, 2004.

<sup>4</sup> As stated above, MCI's Response was filed on August 24, 2004.

1 Public Service Commission denying a similar Motion to Dismiss filed by Qwest in Utah. Utah  
2 Public Service Commission Docket No. 04-2245-01, *Order Denying Motion to Dismiss* (September  
3 30, 2004).

4 On October 8, 2004, Staff filed a Notice of Filing Supplemental Authority attaching a recent  
5 Order issued by the United States District Court for the Western District of Texas regarding filing  
6 requirements of a commercial agreement between Sage Telecom, L.P. and SBC Texas. *Sage*  
7 *Telecom v. Public Utility Comm'n of Texas*, Case No. A-04-CA-364-SS (rel. October 7, 2004) ("*Sage*  
8 *Telecom*").

9 On October 25, 2004, Staff filed additional Supplemental Authority, attaching an Order issued  
10 by the Washington Utilities and Transportation Commission. The Washington Commission rejected  
11 Qwest's arguments regarding lack of jurisdiction and found that the QPP Agreement between Qwest  
12 and MCI was properly submitted for review. Washington State Utilities and Transportation  
13 Commission, Docket No. UT-960310, *et al.*, *Order Approving Negotiated Interconnection Agreement*  
14 *in its Entirety* (October 20, 2004) ("*Washington UTC Order*").

15 On November 2, 2004, Qwest filed a Motion for Leave to File Simultaneous Supplemental  
16 Briefs Concerning Qwest's Motion to Dismiss and request for Oral Argument.

17 On November 5, 2004, Staff filed additional Supplemental Authority in the form of Orders  
18 issued by the South Dakota Public Utilities Commission and the Public Service Commission of  
19 Wyoming denying Motions to Dismiss filed by Qwest. Public Utilities Commission of the State of  
20 South Dakota Docket No. TC04-144, *Order Denying Motion to Dismiss; Order Approving*  
21 *Agreement* (October 29, 2004); Public Service Commission of Wyoming Docket No. 70027-TK-04-  
22 38, *et al.*, *Order* (November 1, 2004).

23 By Procedural Order issued November 10, 2004, simultaneous supplemental briefs were  
24 ordered to be filed, and an oral argument was scheduled for November 30, 2004.

25 On November 18, 2004, Staff filed additional Supplemental Authority, attaching an Order by  
26 the Colorado Public Utilities Commission denying Qwest's Motion to Dismiss. Public Utilities  
27 Commission of the State of Colorado, Docket No. 96A-366T, *Order Approving Interconnection*  
28 *Agreement* (Adopted October 27, 2004).

1 Qwest filed a supplemental brief on November 23, 2004. Oral argument on Qwest's Motion  
2 to Dismiss was conducted on November 30, 2004<sup>5</sup>.

3 In the intervening period since MCI filed the QPP Agreement and the ICA Amendment for  
4 approval in the above-captioned docket, Qwest has entered into virtually identical agreements with a  
5 number of other CLECs. Some of these agreements have been filed for the Commission's approval  
6 in separate dockets, while others have been submitted to Staff for "informational purposes."

7 On April 19, 2005, Qwest and Staff filed a Joint Motion for Consolidation of Dockets and  
8 Request for ALJ to Take Notice ("Joint Motion"). In the Joint Motion, the parties request that as a  
9 matter of judicial economy the resolution of issues raised in this docket should be deemed controlling  
10 with respect to the question of whether each of the QPP Agreements between Qwest and other  
11 CLECs should be filed for the Commission's review under Section 252 of the Telecom Act. Qwest  
12 and Staff also state in the Joint Motion that although the FCC sought comments regarding whether  
13 commercial agreements were subject to the Section 252 filing requirement, the FCC's Order on  
14 Remand did not address the issue<sup>6</sup>. Attached to the Joint Motion was a list of all other QPP  
15 Agreements between Qwest and other CLECs for provision of service in Arizona.

16 By Procedural Order issued May 3, 2005, the Joint Motion was granted and parties to the  
17 other QPP Agreements were directed to file by May 23, 2005 any opposition to the Joint Motion's  
18 proposed consolidation, or any additional arguments such parties wished to make with respect to  
19 Qwest's Motion to Dismiss. No response was received in opposition to consolidation of the other  
20 QPP Agreements for purposes of deciding Qwest's Motion to Dismiss in this docket.

21 On May 20, 2005, Qwest filed Supplemental Authority in the form of a May 18, 2005 Order  
22 issued by the Minnesota Public Utilities Commission finding that the Master Service Agreement  
23  
24

25 <sup>5</sup> During the oral argument, counsel for MCI stated that state commissions in Minnesota, New Mexico, and Oregon have  
26 also issued Orders denying Qwest's requests for dismissal of applications seeking review of the QPP Agreements in those  
27 states (November 30, 2004 Oral Argument Tr. 9). However, as noted below, on reconsideration the Minnesota  
28 Commission reversed its prior decision and found that the MCI/Qwest Master Services agreement did not require the  
Minnesota Commission's approval.

<sup>6</sup> *Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local  
Exchange Carriers*, FCC 04-290, 70 FR 8940 (February 24, 2005).

1 between MCI and Qwest was not required to be filed with the Minnesota Commission<sup>7</sup>. Minnesota  
 2 Public Utilities Commission, Docket No. P-5321, 421/IC-04-1178, *Order after Reconsideration*  
 3 *Releasing Master Service Agreement from Approval Review, Requiring Amendment to*  
 4 *Interconnection Agreement, and Requiring Submission of Future Commercial Agreements*  
 5 (*“Minnesota Reconsideration Order”*).

6 On June 14, 2005, Qwest filed additional Supplemental Authority, attaching an Order issued  
 7 by the United States District Court for the District of Montana overturning a decision by the Montana  
 8 Public Service Commission that required approval of a line-sharing agreement between Qwest and  
 9 Covad. United States District Court for the District of Montana, Helena Division, *Qwest*  
 10 *Corporation v. Montana Public Service Commission*, Case No. CV-04-053-H-CSO (June 9, 2005)  
 11 (*“Montana District Court Order”*).

## FINDINGS OF FACT

### Description of MCI’s Application

14 1. As described in MCI’s application, the Amendment to the Qwest/MCI Interconnection  
 15 Agreement (“ICA”) makes the following three principal changes to the existing ICA: (1) batch hot  
 16 cut terms and conditions are added; (2) line splitting will be available for loops provided under the  
 17 ICA; and (3) Qwest will not provide to MCI unbundled mass market switching, unbundled enterprise  
 18 switching, or unbundled shared transport in combination with other network elements as part of the  
 19 provision of the unbundled network element platform (“UNE-P”) (MCI Application, at 3-4).

20 2. MCI’s application also includes a request for approval of the QPP Agreement between  
 21 MCI and Qwest. The QPP Agreement states that Qwest will provide services consisting of the  
 22 “Local Switching Network Element (including the basic switching function, the port, plus the  
 23 features, functions, and capabilities of the Switch including all compatible and available vertical  
 24 features, such as hunting and anonymous call rejection, provided by the Qwest switch) and the  
 25 Shared Transport Network Element in combination, at a minimum to the extent available on UNE-P  
 26 under the applicable interconnection agreement or SGAT where MCImetro has opted into an SGAT

27 <sup>7</sup> The Minnesota Commission still requires the submission of all commercial agreements for a threshold determination of  
 28 whether the agreement contains Section 251 network elements that are subject to review and approval under Section 252.  
*Minnesota Reconsideration Order*, at 8.

1 as its interconnection agreement ... as the same existed on June 14, 2004” (*Id.* at 4). The QPP  
 2 Agreement also provides recurring and nonrecurring rates for QPP services, as well as commercial  
 3 performance measurements and reporting requirements (*Id.* at 5). MCI’s application states that the  
 4 ICA amendments and the QPP Agreement are available to any telecommunications carrier under the  
 5 same rates, terms and conditions. MCI therefore requests approval of both the ICA amendments and  
 6 the QPP Agreement (*Id.* at 6-7).

### 7 Discussion and Resolution

8 3. Through its Motion to Dismiss and Reply pleadings, Qwest contends that the QPP  
 9 Agreement with MCI is a “commercial agreement” under which Qwest agreed to provide services  
 10 pursuant to Section 271 of the 1996 Act. Qwest claims that two controlling decisions establish that  
 11 the QPP Agreement is not subject to either Section 251 or 252 and therefore this Commission has no  
 12 authority to review and approve the agreement<sup>8</sup>. According to Qwest, because the QPP Agreement  
 13 does not pertain to the provision of network elements that Qwest is required to provide pursuant to  
 14 Sections 251(b) and (c) of the 1996 Act, it is not an interconnection agreement that must be filed with  
 15 state commissions under Section 252(a)(1).

16 4. 47 U.S.C. §252(a)(1) provides as follows:

17 Upon receiving a request for interconnection, services, or network  
 18 elements pursuant to section 251, an incumbent local exchange carrier  
 19 may negotiate and enter into a binding agreement with the requesting  
 20 telecommunications carrier or carriers without regard to the standards set  
 21 forth in subsection (b) and (c) of section 251. The agreement shall include  
 22 a detailed schedule of itemized charges for interconnection and each  
 23 service or network element included in the agreement. The agreement,  
 24 including any interconnection agreement negotiated before the date of the  
 25 enactment of the Telecommunications Act of 1996, shall be submitted to  
 26 the State commission under subsection (e) of this section.

27 47 U.S.C. §252(e)(1) provides:

28 *Any interconnection agreement adopted by negotiation or arbitration shall  
 be submitted for approval to the State commission. A State commission to*

<sup>8</sup> *In the Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, 17 FCC Rcd 19337, *Memorandum Opinion and Order* (October 4, 2002) (“*Declaratory Order*”); *United States Telephone Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA IP*”).

1 which an agreement is submitted shall approve or reject the agreement,  
2 with written findings as to any deficiencies (emphasis added).

3 5. In the *Declaratory Order* cited above, the FCC stated that “the state commissions  
4 should be responsible for applying, in the first instance, the statutory interpretation we set forth today  
5 to the terms and conditions of specific agreements” (*Declaratory Order*, at ¶7). The FCC further  
6 stated that its interpretation of the state commission filing requirement “is consistent with the  
7 structure of section 252, which vests in the states the authority to conduct fact-intensive  
8 determinations relating to interconnection agreements” (*Id.*). The FCC rejected Qwest’s attempt to  
9 limit the filing of interconnection agreements to schedules of itemized charges and descriptions of  
10 services and found, instead, that “state commissions are well positioned to decide on a case-by-case  
11 basis whether a particular agreement is required to be filed as an ‘interconnection agreement’ and, if  
12 so, whether it should be approved or rejected” (*Id.*, at ¶10). The FCC concluded that “an agreement  
13 that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to  
14 rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation  
15 is an interconnection agreement that must be filed pursuant to section 252(a)(1)” (*Id.*, at ¶8, emphasis  
16 original).

17 6. Although the language in Section 252 clearly directs that any interconnection  
18 agreements must be submitted for the Commission’s approval, Qwest argues that footnote 26 in the  
19 *Declaratory Order* supports its position<sup>9</sup>. Qwest’s argument is based on the FCC’s disagreement  
20 with the parties opposing Qwest that *all* agreements between an incumbent LEC and a requesting  
21 carrier must be filed. The FCC stated that “only those agreements that contain an ongoing obligation  
22 relating to section 251(b) or (c) must be filed under 252(a)(1)” (*Id.*, fn 26).

23 7. Contrary to Qwest’s assertions, the language in the cited footnote should not be read in  
24 the limited manner suggested by Qwest. Rather, the footnote simply reflects a response to the  
25 commenting parties that advocated filing of all agreements between ILECs and requesting carriers.

26  
27 <sup>9</sup> Footnote 26 in the *Declaratory Order* states, in relevant part: “We therefore disagree with the parties that advocate the  
28 filing of *all* agreements between an incumbent LEC and a requesting carrier [emphasis original]. See Office of the New Mexico Attorney General and the Iowa Office of Consumer Advocate Comments at 5. Instead we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1).”

1 When read in the context of the entire Order, it is clear the FCC intended that only a narrow subset of  
 2 agreements would not be subject to the Section 252 filing requirement<sup>10</sup> but all other agreements that  
 3 create an ongoing obligation with respect to resale, number portability, dialing parity, access to  
 4 rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation  
 5 must be filed pursuant to section 252(a)(1). The QPP Agreement clearly does not fall within any of  
 6 the exceptions in the *Declaratory Order* and it is therefore subject to the Section 252 filing  
 7 requirements because the agreement's terms specifically address prices to be paid for network  
 8 elements under the definition set forth in 47 U.S.C. §153 and the QPP Agreement addresses ongoing  
 9 obligations between Qwest and MCI.

10 8. The interpretation advocated by Qwest would unduly restrict the responsibilities of  
 11 state commissions to determine "in the first instance" whether agreements between incumbent LECs  
 12 and requesting carriers should be approved. The FCC recognized the critical role of the state  
 13 commissions in reviewing and approving *any* interconnection agreement adopted by negotiation or  
 14 arbitration. As Staff points out, there is no federal filing exception for so-called "commercial  
 15 agreements" that would enable Qwest to escape the clear intent expressed by Congress through  
 16 Section 252.

17 9. Setting aside the deficiencies in Qwest's arguments, the QPP Agreement and the  
 18 proposed ICA Amendment are clearly integrated agreements that are not severable. For example,  
 19 Paragraph 23 of the QPP Agreement provides:

20 In the event the FCC, a state commission or any other governmental  
 21 authority or agency rejects or modifies any material provision in this  
 22 Agreement, *either Party may immediately upon written notice to the other*  
 23 *Party terminate this Agreement and any interconnection agreement*  
*amendment executed concurrently with this Agreement (emphasis added).*

24 Indeed, the integrated pricing structure of the two agreements is evident by reading Paragraph 3.2 of  
 25 the Service Exhibit 1 of the QPP Agreement, which states as follows:

26  
 27 <sup>10</sup> The narrow exceptions identified by the FCC are: dispute resolution and escalation provisions (§9); agreements  
 28 addressing settlements of "backward-looking" billing disputes (§12); forms used by requesting carriers to obtain service  
 (§13); and certain agreements with bankrupt competitors entered into at the direction of the bankruptcy court (§14).

1 To the extent that the monthly recurring rate for the loop element in a  
2 particular state is modified on or after the Effective Date, the QPP port  
3 rate for that state in the Rate Sheet will be adjusted (either up or down) so  
4 that the total rate applicable to the QPP service and loop combination in  
5 that state (after giving effect to the QPP Port Rate Increases as adjusted for  
6 any applicable discount pursuant to Section 3.3 of this Service Exhibit)  
7 remains constant.

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11 10. Thus, pursuant to the terms of the QPP Agreement, any change in pricing by a given  
12 state commission for the loop rate elements set forth in the parties' ICA would automatically result in  
13 a commensurate increase or decrease in the applicable charges under the QPP Agreement. The inter-  
14 relation of the two agreements is further evidenced in the language addressing the Batch Hot Cut  
15 process, which provides for an incremental linkage between the QPP port rates and monthly recurring  
16 rates for the switch port. *See, e.g., Washington UTC Order, supra*, at 11.

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28 11. Qwest also asserts that the Commission's authority under section 252(e)(1) to approve  
interconnection agreements is limited to agreements concerning section 251(b) and (c) obligations.  
However, even if the request for network elements was provided on a voluntary basis by Qwest,  
Qwest retained the duty under section 251 to provide local number portability, dialing parity,  
reciprocal compensation and unbundled loops. In any event, the QPP Agreement is clearly a  
negotiated agreement within the meaning of section 252(a)(1) and, as long as the incumbent LEC has  
agreed to provide network elements or their functional equivalent the agreement must be filed with  
the state commission for approval. Even if a question were to exist as to whether the QPP Agreement  
is the type of agreement that must be filed, the FCC recognized that the state commission has  
jurisdiction *in the first instance* to make such a determination (*Declaratory Order, supra*, at ¶7). For  
these reasons, we disagree with the recent decisions by the Minnesota Commission and the Montana  
District Court which determined that commercial agreements are not required to be filed for state  
commission approval because they do not contain Section 251 obligations that are subject to Section  
252 review. We believe that the provisions of the 1996 Telecommunications Act require the filing of  
"commercial agreements" such as the QPP Master Services Agreement that was submitted as part of  
MCI's application in the above-captioned docket.

12. 47 U.S.C. 271(c)(2)(B) provides that in order to meet their obligations under the 271

1 Competitive Checklist requirements BOCs such as Qwest must, among other things, provision: local  
2 loop transmission from the central office to the customer's premises, unbundled from local switching  
3 or other services; local transport from the trunk side of a wireline local exchange carrier switch  
4 unbundled from switching or other services; and local switching unbundled from transport, local loop  
5 transmission, or other services. The BOC is required to provide access or interconnection pursuant to  
6 a Statement of Generally Available Terms and Conditions ("SGAT") or an Interconnection  
7 Agreement and, pursuant to Section 252, state commissions are granted authority to review and  
8 approve both the SGAT and interconnection agreements between carriers operating within the state's  
9 jurisdiction. As Staff points out, contrary to Qwest's contentions, there is no separate review and  
10 approval process provided for in Section 271 and, thus, it must be presumed that the review of such  
11 agreements was intended to occur within the context of the state commissions' Section 252 review  
12 process. We also agree with Staff that the filing of agreements pursuant to Section 271 is not  
13 exclusively a federal matter that preempts state oversight. The FCC has specifically recognized the  
14 role of state commissions regarding local competition issues, stating in the Local Competition First  
15 Report and Order that state authority under Section 252 "extends to both interstate and intrastate  
16 matters." The FCC also recognized that "state commissions are well positioned to decide on a case-  
17 by-case basis whether a particular agreement is required to be filed as an 'interconnection agreement'  
18 and, if so, whether it should be approved or rejected."<sup>11</sup> Although we do not believe it is necessary, at  
19 this time, to decide whether the QPP Agreement must be filed under the Section 271 requirements,  
20 we do not concede that our jurisdiction is so limited as Qwest argues in its pleadings.

21 13. Pursuant to A.A.C. R14-2-1506(A), interconnection agreements must be submitted to  
22 the Commission for approval under 47 U.S.C. 252(e) within 30 days of a Commission Order  
23 regarding an arbitration petition or within 30 days of execution of a negotiated agreement. Under the  
24 Commission's Rules, an Interconnection Agreement is defined as a "formal agreement between any  
25 telecommunications carriers providing or intending to provide telecommunications services in  
26 Arizona, setting forth the particular terms and conditions under which interconnection and resale

27  
28 <sup>11</sup> *Declaratory Ruling, supra*, at ¶10.

1 services, as appropriate, will be provided.” A.A.C. R14-2-1502. With respect to whether the  
2 agreement contains “interconnection services,” A.A.C. R14-2-1302 defines such services as “those  
3 features and functions of a local exchange carrier’s network that enable other local exchange carriers  
4 to provide local exchange and exchange access services. Interconnection services include, but are not  
5 limited to, those services offered by local exchange carriers which have been classified by the  
6 Commission as essential services.” We agree with Staff’s argument that the agreement between  
7 Qwest and MCI contains the type of interconnection services contemplated under the Commission’s  
8 Rules and, therefore, the agreement is required to be filed with the Commission pursuant to A.A.C.  
9 R14-2-1506(A).

10 **CONCLUSIONS OF LAW**

11 1. Qwest and MCI are public service corporations within the meaning of Article XV of  
12 the Arizona Constitution and A.R.S. §40-201 *et seq.*

13 2. The Commission has jurisdiction over Qwest and MCI and the subject matter of the  
14 application.

15 3. Commission approval of the QPP Master Services Agreement is permitted and  
16 contemplated by Section 252 of the federal Telecommunications Act of 1996.

17 4. The QPP Master Services Agreement covers the provision of interconnection services  
18 and must therefore be filed for the Commission’s review and approval pursuant to A.A.C. R14-2-  
19 1506(A).

20 5. Commission review of the proposed Amendment to Interconnection Agreement for  
21 Elimination of UNE-P and Implementation of Batch Hot Cut Process and Discounts, as well as the  
22 QPP Master Service Agreement, is consistent with state and federal law.

23 **ORDER**

24 IT IS THEREFORE ORDERED that Qwest’s Motion to Dismiss Application for Review of  
25 Negotiated Commercial Agreement is denied.

26 IT IS FURTHER ORDERED that MCImetro Access Transmission Services, LLC’s  
27 Application for Review and Approval of its Amendment to Interconnection Agreement and the QPP  
28 Master Service Agreement are properly filed with the Commission, and the consideration of such

1 Application is within the Commission's jurisdiction.

2 IT IS FURTHER ORDERED that any interconnection agreement that pertains to an ongoing  
3 obligation for interconnection, services, or network elements must be filed with the Commission for  
4 review and approval pursuant to 47 U.S.C. §252.

5 IT IS FURTHER ORDERED that integrated agreements such as the QPP Master Service  
6 Agreement and Interconnection Agreement amendment submitted herein must be filed for the  
7 Commission's review and approval in accordance with both federal law and state rules.

8 IT IS FURTHER ORDERED that this Decision applies to each of the agreements set forth in  
9 Attachment A hereto, in accordance with the prior agreement between Qwest and Staff and pursuant  
10 to the May 3, 2005 Procedural Order consolidating those agreements with the above-captioned  
11 docket.

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

13 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

14  
15  
16 CHAIRMAN

COMMISSIONER

17  
18 COMMISSIONER

COMMISSIONER

COMMISSIONER

19  
20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
21 Secretary of the Arizona Corporation Commission, have  
22 hereunto set my hand and caused the official seal of the  
23 Commission to be affixed at the Capitol, in the City of Phoenix,  
24 this \_\_\_\_ day of \_\_\_\_\_, 2005.

25  
26 \_\_\_\_\_  
27 BRIAN C. McNEIL  
28 EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

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SERVICE LIST FOR:  
  
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Vycera Communications, Inc.  
12750 High Bluff Drive, Ste. 200  
San Diego, CA 92130  
  
Granite Telecommunications, LLC  
234 Copeland Street  
Quincy, MA 02169

MCIMETRO ACCESS TRANSMISSION SERVICES,  
LLC  
  
T-01051B-04-0540 et al.  
  
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Integra Telecom of Arizona, Inc.  
19545 NW Von Neumann Drive, Ste. 200  
Beaverton, OR 97006  
  
William Haas  
McLeodUSA Telecommunications Services,  
Inc.  
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P.O. Box 3177  
Cedar Rapids, IA 52406  
  
Jeffrey J. Walker  
Preferred Carrier Services, Inc.  
14681 Midway Road, Ste. 105  
Addison, TX 75001  
  
Metropolitan Telecommunications of Arizona,  
Inc.  
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New York, NY 10005  
  
Jim Houghtalin  
TelLogic  
370 N. Market Street  
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William Levis  
MCImetro Access Transmission Services  
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Robert A. Curtis  
Trinsic Communications, Inc.  
601 South Harbour Island Blvd., Ste. 2200  
Tampa, FL 33602

1 Lisa Lezotte  
2 CAN Communication Services, Inc.  
3 32991 Hamilton Court  
4 Farmington Hills, MI 48334  
5  
6 Donna Beaver  
7 The J. Richard Company  
8 4607 E. Molly Lane  
9 Cave Creek, AZ 85331  
10  
11 Keith Nussbaum  
12 Preferred Long Distance, Inc.  
13 16830 Ventura Blvd., Ste. 350  
14 Encino, CA 91436  
15  
16 Arthur L. Magee  
17 Budget Phone, Inc.  
18 6901 W. 70<sup>th</sup> Street  
19 Shreveport, IA 71149  
20  
21 Linda Hunt  
22 Lightyear Network Solutions, LLC  
23 1901 Eastpoint Parkway  
24 Louisville, KY 40223  
25  
26 Steven S. Solbrack  
27 Popp Telecom, Inc.  
28 620 Mendelssohn Avenue N  
Golden Valley, MN 55427  
29  
30 Jeff Compton  
31 Telscape Communications, Inc.  
32 606 E. Huntington Drive  
33 Monrovia, CA 91016  
34  
35 Paul Masters  
36 Ernest Communications, Inc.  
37 6475 Jimmy Carter Blvd., Ste. 300  
38 Norcross, GA 30071  
39  
40 Dennis Ahlers  
41 Eschelon Telecom of Arizona, Inc.  
42 730 Second Avenue South, Ste. 1200  
43 Minneapolis, MN 55402

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New Rochelle Telephone Corp.  
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White Plains, NY 10601

1 Christopher Staton  
2 PiperTel Communications, LLC  
3 2100 S. Cherry Street, Ste. 230  
4 Denver, CO 80222

5 Debra Waller  
6 CAT Communications International, Inc.  
7 4142 Melrose Avenue NW  
8 Roanoke, CA 24017

9 Jeff Rhoden  
10 Prime Time Ventures, LLC  
11 210 W. 8<sup>th</sup> Street, Ste. 202  
12 Medford, OR 97501

13 Christopher K. Kempley, Chief Counsel  
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16 1200 West Washington Street  
17 Phoenix, Arizona 85007

18 Ernest Johnson, Director  
19 Utilities Division  
20 ARIZONA CORPORATION COMMISSION  
21 1200 West Washington Street  
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24  
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## ATTACHMENT A

**QWEST QPP AGREEMENTS**

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between Qwest Corp. and Vycera Communications, Inc.”</p> <p>(QPP)</p>	<p>T-01051B-05-0255 T-03141A-05-0255</p>	<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><b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b></p>
<p>Application of Qwest Corp. for Approval of an Interconnection Agreement with Granite Telecommunications, Inc.</p> <p>(QPP)</p>	<p>T-01051B-04-0764 T-04208A-04-0764</p>	<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><b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b></p>
<p>“Commercial Agreement between Qwest Corp. and New Rochelle Telephone Corp. fka Peconic Telco”</p> <p>(QPP)</p>	<p>T-01051B-05-0271</p>	<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><b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b></p>

**QWEST QPP AGREEMENTS**

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between Qwest Corp. and AT&amp;T and TCG”</p> <p>(QPP)</p>	<p>T-01051B-05-0272 T-02428A-05-0272 T-03016A-05-0272</p>	<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><b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b></p>
<p>“Commercial Agreement between Qwest Corp. and Integra Telecom of Arizona, Inc.”</p> <p>(QPP)</p>	<p>T-01051B-05-0274</p>	<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><b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b></p>
<p>“Commercial Agreement between Qwest Corp. and McLeodUSA Telecommunications Services, Inc.”</p> <p>(QPP)</p>	<p>T-01051B-05-0273 T-03267A-05-0273</p>	<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><b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b></p>
<p>“Commercial Agreement between Qwest Corp. and Preferred Carrier Services Inc. dba</p>	<p>T-01051B-05-0254 T-03583A-05-0254</p>	<p>Agreement given to Staff for informational purposes 2-15-05</p> <p>Staff letter to</p>	<p><b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b></p>

**QWEST QPP AGREEMENTS**

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
Phones for All" (QPP)		parties 2-18-05  Staff docketed Agreement 4-11-05	
"Commercial Agreement between Qwest Corp. and Metropolitan Telecommunications of Arizona, Inc." (QPP)	T-01051B-05-0266 T-03991A-05-0266	Agreement given to Staff for informational purposes 2-24-05  Staff docketed Agreement 4-11-05	<b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b>
"Commercial Agreement between Qwest Corp. and Quality Telephone, Inc." (QPP)	T-01051B-05-0258 T-04172A-05-0258	Agreement given to Staff for informational purposes 2-17-05  Staff letter to parties 2-18-05  Staff docketed Agreement 4-11-05	<b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b>
Application of MCImetro Access Transmission Services for Approval of an Amendment for Elimination of UNE-P and Implementation of Batch Hot Cut Process and QPP Master Services	T-01051B-04-0540 T-03574A-04-0540	Agreement docketed 7-28-04 by MCImetro  Qwest filed Motion to Dismiss Application for Review of Negotiated Commercial Agreement 8-6-04  Qwest filed	<b>Consolidate other QPP cases into this one</b>

**QWEST QPP AGREEMENTS**

Revised May 2, 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 <b>Z-Tel Communications, Inc.</b>  (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	<b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b>
Application of Qwest Corp. for an Interconnection Agreement with <b>Northstar Telecom, Inc.</b>  (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	<b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b>

**QWEST QPP AGREEMENTS**

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between ACN Communication Services, Inc. and Qwest Corp.”</p> <p>(OPP)</p>	<p>T-01051B-05-0269 T-03835A-05-0269</p>	<p>Agreement given to Staff for informational purposes 1-17-05 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><b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b></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 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><b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b></p>
<p>“Commercial Agreement between Qwest Corp. and Preferred Long Distance Inc.”</p>	<p>T-01051B-05-0260 T-04308A-05-0260</p>	<p>Agreement given to Staff for informational purposes 1-28-05</p> <p>Staff letter to</p>	<p><b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b></p>

**QWEST QPP AGREEMENTS**

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
(QPP)		parties 2-8-05  Qwest filed Motion to Dismiss 2-11-05 <b>(Qwest filed this Motion in Docket 05-0050)</b>  Staff docketed Agreement 4-11-05	
"Commercial Agreement Between Qwest Corp. and Budget Phone, Inc."  (QPP)	T-01051B-05-0270 T-04079A-05-0270	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 <b>(Qwest filed this Motion in Docket 05-0063)</b>  Staff docketed Agreement 4-11-05	<b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b>
"Commercial Agreement between Qwest Corp. and Lightyear Network Solutions, LLC"  (QPP)	T-01051B-05-0267 T-04229A-05-0267	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	<b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b>

**QWEST QPP AGREEMENTS**

Revised May 2, 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>	<p>T-01051B-05-0264 T-02575B-05-0264</p>	<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>	<p>T-04215A-05-0113 T-01051B-05-0113</p>	<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>

DECISION NO. \_\_\_\_\_

**QWEST QPP AGREEMENTS**

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
		2-18-05	
<p>"Commercial Agreement between Qwest Corp. and Eschelon Telecom of Arizona, Inc. (QPP)</p>	<p>T-03406A-05-0288 T-01051B-05-0288</p>	<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 <b>(Qwest filed this Motion in Docket 05-0081)</b></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><b>Consolidate with Docket Nos.</b> T-01051B-04-0540 T-03574A-04-0540</p>
<p>"Commercial Agreement between Qwest Corp. and PiperTel Communications LLC" (QPP)</p>	T-01051B-05-0268	<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><b>Consolidate with Docket Nos.</b> T-01051B-04-0540 T-03574A-04-0540</p>
<p>"Commercial Agreement between Qwest Corp. and Ernest</p>	<p>T-01051B-05-0262 T-03631A-05-0262</p>	<p>Agreement given to Staff for informational purposes 3-10-05</p>	<p><b>Consolidate with Docket Nos.</b> T-01051B-04-0540 T-03574A-04-0540</p>

**QWEST QPP AGREEMENTS**

Revised May 2, 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)	T-01051B-05-0263 T-04276A-05-0263	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)	T-01051B-05-0256 T-03658A-05-0256	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)	T-01051B-05-0313 T-03632A-05-0313	Agreement given to Staff for informational purposes 3-21-05  Staff letter to parties 3-23-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement	T-01051B-05-0265	Agreement given to Staff for	Consolidate with Docket Nos.

**QWEST QPP AGREEMENTS**

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
Between Qwest Corp. and CAT Communications International, Inc.”  (QPP)		informational purposes 3-21-05  Staff letters to parties 3-23-05; 3-31-05  Staff docketed Agreement 4-12-05	T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement Between Qwest Corp. and Prime Time Ventures LLC”  (QPP)	T-01051B-05-0252	Agreement given to Staff for informational purposes 3-21-05  Staff letter to parties 3-23-05  Staff docketed Agreement 4-11-05	<b>Consolidate with Docket Nos.</b> T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement between Qwest Corp. and 1-800-Reconex Inc. dba USTel”  (QPP)	T-01051B-05-0253 T-03318A-05-0253	Agreement given to Staff for informational purposes 1-24-05  Staff letter to parties 1-27-05  Staff docketed Agreement 4-11-05	<b>Consolidate with Docket Nos.</b> T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement between Qwest Corp. and Ionex Communications North, Inc.”  (QPP)	T-01051B-05-0261 T-03864A-05-0261	Agreement given to Staff for informational purposes 4-4-05  Staff letter to parties 4-5-05	<b>Consolidate with Docket Nos.</b> T-01051B-04-0540 T-03574A-04-0540

DECISION NO. \_\_\_\_\_

**QWEST QPP AGREEMENTS**

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
		Staff docketed Agreement 4-11-05	
"Commercial Agreement between Qwest and Tel West Communications, LLC"	T-01051B-05-0259 T-03592A-05-0259	Agreement given to Staff for informational purposes 2-15-05  Staff letter to parties 2-18-05  Staff docketed Agreement 4-11-05	<b>Consolidate with Docket Nos.</b> <b>T-01051B-04-0540</b> <b>T-03574A-04-0540</b>