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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

COMMISSIONERS

SEP 09 2005

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

DOCKETED BY
KA

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

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

Decision No. **68116**

**ORDER DENYING MOTION TO
DISMISS**

BY THE COMMISSION:

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

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

On August 13, 2004, Qwest filed a Request for Suspension of 30-Day Time Clock pursuant to A.A.C. R14-2-1508². Qwest requested suspension of the applicable time clock rules so that the

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

² 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&T³, 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, 2004⁴.

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 ³ 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.

⁴ 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, 2004⁵.

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 issue⁶. 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 ⁵ 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.

⁶ *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 Commission⁷. 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”*).

12 On June 28, 2005, a Recommended Order Denying Motion to Dismiss was issued by the
13 Administrative Law Judge.

14 On July 7, 2005, Qwest filed Exceptions to the Recommended Order. In its Exceptions,
15 Qwest raised substantive legal arguments regarding recent rulings by the Minnesota Public Utilities
16 Commission and a federal district court in Montana to which no opposing party had previously had
17 an opportunity to respond.

18 On July 11, 2005, a Procedural Order was issued directing interested parties to respond to
19 Qwest’s Exceptions by August 5, 2005, and for Qwest to file a reply to any such responses by August
20 15, 2005. Qwest was also ordered to serve a copy of its Exceptions on each of the parties on the
21 service list attached to the Recommended Order⁸.

22 On August 4, 2005, MCI filed a Response to Qwest’s Exceptions incorporating the arguments
23 contained in its prior pleadings in this docket and noting that the Minnesota and Montana decisions
24 cited by Qwest are not binding on the Commission.

25
26 ⁷ The Minnesota Commission still requires the submission of all commercial agreements for a threshold determination of
whether the agreement contains Section 251 network elements that are subject to review and approval under Section 252.
Minnesota Reconsideration Order, at 8.

27 ⁸ By Motion filed July 14, 2005, Qwest requested an extension until August 19, 2005 to file its reply, and submitted a
28 Notice of Service of its Exceptions on the parties not previously served. By Procedural Order issued July 15, 2005,
Qwest’s extension request was granted.

1 On August 5, 2005, Timothy Berg filed a Motion and Consent of Counsel for Pro Hac Vice
2 Admission of Todd Lundy to appear in this matter on behalf of Qwest. Attached to the Motion were
3 the forms and documents required by the State Bar of Arizona. No opposition to the Motion was
4 received. Mr. Lundy shall therefore be granted pro hac vice admission in this proceeding.

5 On August 5, 2005, Staff filed its Response to Qwest's Exceptions stating its opposition to
6 Qwest's arguments and expressing support for the Recommended Order.

7 On August 19, 2005, Qwest filed its Reply in Support of its Exceptions. Qwest reiterated the
8 arguments set forth in its Exceptions and opposed the arguments raised in Staff's Response.

9 The issues addressed in the Responses filed by MCI and Staff, and in the Reply submitted by
10 Qwest, are essentially the same legal arguments raised in the parties' prior pleadings. These issues
11 and arguments are discussed and resolved below in the text of the Recommended Order.

12 FINDINGS OF FACT

13 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 as its interconnection agreement ... as the same existed on June 14, 2004" (*Id.* at 4). The QPP
28 Agreement also provides recurring and nonrecurring rates for QPP services, as well as commercial

1 performance measurements and reporting requirements (*Id.* at 5). MCI's application states that the
 2 ICA amendments and the QPP Agreement are available to any telecommunications carrier under the
 3 same rates, terms and conditions. MCI therefore requests approval of both the ICA amendments and
 4 the QPP Agreement (*Id.* at 6-7).

5 Discussion and Resolution

6 3. Through its Motion to Dismiss and Reply pleadings, Qwest contends that the QPP
 7 Agreement with MCI is a "commercial agreement" under which Qwest agreed to provide services
 8 pursuant to Section 271 of the 1996 Act. Qwest claims that two controlling decisions establish that
 9 the QPP Agreement is not subject to either Section 251 or 252 and therefore this Commission has no
 10 authority to review and approve the agreement⁹. According to Qwest, because the QPP Agreement
 11 does not pertain to the provision of network elements that Qwest is required to provide pursuant to
 12 Sections 251(b) and (c) of the 1996 Act, it is not an interconnection agreement that must be filed with
 13 state commissions under Section 252(a)(1).

14 4. 47 U.S.C. §252(a)(1) provides as follows:

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

25 47 U.S.C. §252(e)(1) provides:

26 *Any* interconnection agreement adopted by negotiation or arbitration shall
 27 be submitted for approval to the State commission. A State commission to
 28 which an agreement is submitted shall approve or reject the agreement,
 with written findings as to any deficiencies (emphasis added).

29 ⁹ *In the Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to*
 30 *File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-
 31 89, 17 FCC Rcd 19337, *Memorandum Opinion and Order* (October 4, 2002) ("*Declaratory Order*"); *United States*
 32 *Telephone Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

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

15 6. Although the language in Section 252 clearly directs that any interconnection
16 agreements must be submitted for the Commission’s approval, Qwest argues that footnote 26 in the
17 *Declaratory Order* supports its position¹⁰. Qwest’s argument is based on the FCC’s disagreement
18 with the parties opposing Qwest that *all* agreements between an incumbent LEC and a requesting
19 carrier must be filed. The FCC stated that “only those agreements that contain an ongoing obligation
20 relating to section 251(b) or (c) must be filed under 252(a)(1)” (*Id.*, fn 26).

21 7. Contrary to Qwest’s assertions, the language in the cited footnote should not be read in
22 the limited manner suggested by Qwest. Rather, the footnote simply reflects a response to the
23 commenting parties that advocated filing of all agreements between ILECs and requesting carriers.
24 When read in the context of the entire Order, it is clear the FCC intended that only a narrow subset of
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26
27 ¹⁰ 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 agreements would not be subject to the Section 252 filing requirement¹¹ but all other agreements that
 2 create an ongoing obligation with respect to resale, number portability, dialing parity, access to
 3 rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation
 4 must be filed pursuant to section 252(a)(1). The QPP Agreement clearly does not fall within any of
 5 the exceptions in the *Declaratory Order* and it is therefore subject to the Section 252 filing
 6 requirements because the agreement's terms specifically address prices to be paid for network
 7 elements under the definition set forth in 47 U.S.C. §153 and the QPP Agreement addresses ongoing
 8 obligations between Qwest and MCI.

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

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

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

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

25 To the extent that the monthly recurring rate for the loop element in a
 26 particular state is modified on or after the Effective Date, the QPP port

27 ¹¹ 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 rate for that state in the Rate Sheet will be adjusted (either up or down) so
2 that the total rate applicable to the QPP service and loop combination in
3 that state (after giving effect to the QPP Port Rate Increases as adjusted for
any applicable discount pursuant to Section 3.3 of this Service Exhibit)
remains constant.

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

10 11. Qwest also asserts that the Commission's authority under section 252(e)(1) to approve
11 interconnection agreements is limited to agreements concerning section 251(b) and (c) obligations.
12 However, even if the request for network elements was provided on a voluntary basis by Qwest,
13 Qwest retained the duty under section 251 to provide local number portability, dialing parity,
14 reciprocal compensation and unbundled loops. In any event, the QPP Agreement is clearly a
15 negotiated agreement within the meaning of section 252(a)(1) and, as long as the incumbent LEC has
16 agreed to provide network elements or their functional equivalent the agreement must be filed with
17 the state commission for approval. Even if a question were to exist as to whether the QPP Agreement
18 is the type of agreement that must be filed, the FCC recognized that the state commission has
19 jurisdiction *in the first instance* to make such a determination (*Declaratory Order, supra*, at ¶7). For
20 these reasons, we disagree with the recent decisions by the Minnesota Commission and the Montana
21 District Court which determined that commercial agreements are not required to be filed for state
22 commission approval because they do not contain Section 251 obligations that are subject to Section
23 252 review. We believe that the provisions of the 1996 Telecommunications Act require the filing of
24 "commercial agreements" such as the QPP Master Services Agreement that was submitted as part of
25 MCI's application in the above-captioned docket.

26 12. 47 U.S.C. 271(c)(2)(B) provides that in order to meet their obligations under the 271
27 Competitive Checklist requirements BOCs such as Qwest must, among other things, provision: local
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1 loop transmission from the central office to the customer's premises, unbundled from local switching
2 or other services; local transport from the trunk side of a wireline local exchange carrier switch
3 unbundled from switching or other services; and local switching unbundled from transport, local loop
4 transmission, or other services. The BOC is required to provide access or interconnection pursuant to
5 a Statement of Generally Available Terms and Conditions ("SGAT") or an Interconnection
6 Agreement and, pursuant to Section 252, state commissions are granted authority to review and
7 approve both the SGAT and interconnection agreements between carriers operating within the state's
8 jurisdiction. As Staff points out, contrary to Qwest's contentions, there is no separate review and
9 approval process provided for in Section 271 and, thus, it must be presumed that the review of such
10 agreements was intended to occur within the context of the state commissions' Section 252 review
11 process. We also agree with Staff that the filing of agreements pursuant to Section 271 is not
12 exclusively a federal matter that preempts state oversight. The FCC has specifically recognized the
13 role of state commissions regarding local competition issues, stating in the Local Competition First
14 Report and Order that state authority under Section 252 "extends to both interstate and intrastate
15 matters." The FCC also recognized that "state commissions are well positioned to decide on a case-
16 by-case basis whether a particular agreement is required to be filed as an 'interconnection agreement'
17 and, if so, whether it should be approved or rejected."¹² Although we do not believe it is necessary, at
18 this time, to decide whether the QPP Agreement must be filed under the Section 271 requirements,
19 we do not concede that our jurisdiction is so limited as Qwest argues in its pleadings.

20 13. Pursuant to A.A.C. R14-2-1506(A), interconnection agreements must be submitted to
21 the Commission for approval under 47 U.S.C. 252(e) within 30 days of a Commission Order
22 regarding an arbitration petition or within 30 days of execution of a negotiated agreement. Under the
23 Commission's Rules, an Interconnection Agreement is defined as a "formal agreement between any
24 telecommunications carriers providing or intending to provide telecommunications services in
25 Arizona, setting forth the particular terms and conditions under which interconnection and resale
26 services, as appropriate, will be provided." A.A.C. R14-2-1502. With respect to whether the
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28 ¹² *Declaratory Ruling, supra*, at ¶10.

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

9 **CONCLUSIONS OF LAW**

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

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

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

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

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

22 **ORDER**

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

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

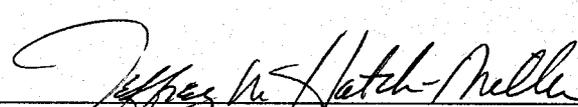
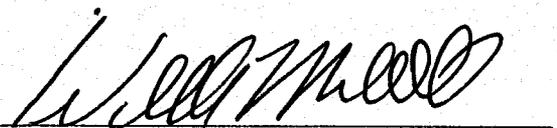
1 IT IS FURTHER ORDERED that any interconnection agreement that pertains to an ongoing
2 obligation for interconnection, services, or network elements must be filed with the Commission for
3 review and approval pursuant to 47 U.S.C. §252.

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

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

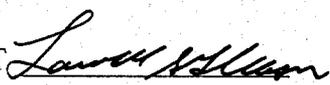
11 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

	
CHAIRMAN	COMMISSIONER
	
COMMISSIONER	COMMISSIONER

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19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
20 Director of the Arizona Corporation Commission, have
21 hereunto set my hand and caused the official seal of the
22 Commission to be affixed at the Capitol, in the City of Phoenix,
23 this 9th day of Sept., 2005.

24
25 
26 BRIAN C. McNEIL
27 EXECUTIVE DIRECTOR

28
29 DISSENT 

30 DISSENT _____

31 DDN:mlj

1	SERVICE LIST FOR:	MCIMETRO ACCESS TRANSMISSION SERVICES, LLC
2		
3	DOCKET NO.:	T-01051B-04-0540 et al.
4	Thomas F. Dixon	Patrick Clisham
5	MCIMETRO ACCESS	320 E. Broadmoor Court
6	TRANSMISSION SERVICES, LLC	Phoenix, AZ 85022
7	707 17 th Street, #4200	
8	Denver, Colorado 80202	Mike Miner
9	Thomas H. Campbell	Integra Telecom of Arizona, Inc.
10	Michael T. Hallam	19545 NW Von Neumann Drive, Ste. 200
11	LEWIS AND ROCA	Beaverton, OR 97006
12	40 N. Central Avenue	
13	Phoenix, Arizona 85004	William Haas
14	Norman G. Curtright	McLeodUSA Telecommunications Services, Inc.
15	QWEST CORPORATION	5400 C Street SW
16	4041 N. Central Avenue, Suite 1100	P.O. Box 3177
17	Phoenix, Arizona 85012	Cedar Rapids, IA 52406
18	Timothy Berg	Jeffrey J. Walker
19	Theresa Dwyer	Preferred Carrier Services, Inc.
20	FENNEMORE CRAIG	14681 Midway Road, Ste. 105
21	3003 N. Central Ave., Suite 2600	Addison, TX 75001
22	Phoenix, Arizona 85012	Metropolitan Telecommunications of Arizona, Inc.
23	Joan S. Burke	44 Wall Street, 14 th Floor
24	OSBORN MALEDON	New York, NY 10005
25	2929 N. Central Ave., Suite 2100	
26	Phoenix, Arizona 85012-2794	Jim Houghtalin
27	Mary B. Tribby	TelLogic
28	AT&T	370 N. Market Street
	1875 Lawrence Street, Suite 1503	Dallas, TX 75202
	Denver, Colorado 80202-1870	
	Dereck M. Gietzen	William Levis
	Vycera Communications, Inc.	MCImetro Access Transmission Services
	12750 High Bluff Drive, Ste. 200	707 17 th Street, Ste. 3900
	San Diego, CA 92130	Denver, CO 80202
	Granite Telecommunications, LLC	Robert A. Curtis
	234 Copeland Street	Trinsic Communications, Inc.
	Quincy, MA 02169	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 Donna Beaver
 6 The J. Richard Company
 7 4607 E. Molly Lane
 8 Cave Creek, AZ 85331

9 Keith Nussbaum
 10 Preferred Long Distance, Inc.
 11 16830 Ventura Blvd., Ste. 350
 12 Encino, CA 91436

13 Arthur L. Magee
 14 Budget Phone, Inc.
 15 6901 W. 70th Street
 16 Shreveport, IA 71149

17 Linda Hunt
 18 Lightyear Network Solutions, LLC
 19 1901 Eastpoint Parkway
 20 Louisville, KY 40223

21 Steven S. Solbrack
 22 Popp Telecom, Inc.
 23 620 Mendelssohn Avenue N
 24 Golden Valley, MN 55427

25 Jeff Compton
 26 Telscape Communications, Inc.
 27 606 E. Huntington Drive
 28 Monrovia, CA 91016

Paul Masters
 Ernest Communications, Inc.
 6475 Jimmy Carter Blvd., Ste. 300
 Norcross, GA 30071

Dennis Ahlers
 Eschelon Telecom of Arizona, Inc.
 730 Second Avenue South, Ste. 1200
 Minneapolis, MN 55402

Scott Loney
 Bullseye Telecom, Inc.
 25900 Greenfield Road, Ste. 330
 Oak Park, MI 48237

Ronald Rodemerk
 Global Crossing Local Services, Inc.
 1080 Pittsford Victor Road
 Pittsford, NY 14534

Prince Jenkins
 DIECA Communications, Inc.
 2330 Central Expressway
 Santa Clara, CA 95050

Todd Meislahn
 1-800-Reconex, Inc.
 2500 Industrial Avenue
 Hubbard, OR 97032

Gregory Lawhon
 Ionex Communications North
 2020 Baltimore
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Jeff Swickard
 Tel West Communications LLC
 P.O. Box 94447
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Matt I'Flaherty
 NorthStar Telecom, Inc.
 1001 Hills Road
 Fremont, NE 68025

Karen Johnson
 Integra Telecom, Inc.
 19545 NW Von Neimann Drive, Ste 200
 Beaverton, OR 97706

Paul Riss
 New Rochelle Telephone Corp.
 74 South Broadway, Ste. 302
 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, VA 24017

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

13 Christopher K. Kempley, Chief Counsel
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
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
22 Phoenix, Arizona 85007

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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>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>Application of Qwest Corp. for Approval of an Interconnection Agreement with Granite Telecommunications, Inc.</p> <p>(QPP)</p>	<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>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>"Commercial Agreement between Qwest Corp. and New Rochelle Telephone Corp. fka Peconic Telco"</p> <p>(QPP)</p>	<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>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

QWEST QPP AGREEMENTS

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between Qwest Corp. and AT&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>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Integra Telecom of Arizona, Inc.”</p> <p>(QPP)</p>	<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>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and McLeodUSA Telecommunications Services, Inc.”</p> <p>(QPP)</p>	<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>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Preferred Carrier Services Inc. dba</p>	<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>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

QWEST QPP AGREEMENTS

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
Phons 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	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
"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	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
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	Consolidate other QPP cases into this one

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 Z-Tel Communications, Inc. (QPP)	T-01051B-04-0925 T-03589A-04-0925	Agreement given to Staff for informational purposes 11-10-04 Agreement docketed by Staff 11-23-04 Staff letter to parties 11-24-05 Qwest filed Motion to Dismiss 1-12-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
Application of Qwest Corp. for an Interconnection Agreement with Northstar Telecom, Inc. (QPP)	T-01051B-04-0926	Agreement given to Staff for informational purposes 10-28-04 Staff letter to parties 11-24-04 Agreement docketed by Staff 12-23-04 Qwest filed Motion to Dismiss 1-12-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540

QWEST QPP AGREEMENTS

Revised 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>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>Application of the J. Richard LLC, dba Live Wire Phone Company for Approval of the QPP Master Service Agreement</p>	<p>T-04257A-05-0048 T-01051B-05-0048</p>	<p>Agreement given to Staff for informational purposes 12-15-04</p> <p>Staff letter to parties 1-14-05</p> <p>Agreement docketed 1-26-05 by J. Richard</p> <p>Qwest filed Motion to Dismiss 2-7-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</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>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</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 (Qwest filed this Motion in Docket 05-0050) 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 (Qwest filed this Motion in Docket 05-0063) Staff docketed Agreement 4-11-05	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
"Commercial Agreement between Qwest Corp. and Lightyear Network Solutions, LLC" (QPP)	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	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540

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>

QWEST QPP AGREEMENTS

Revised May 2, 2005

CASE	DOCKET NO.	STATUS	RECOMMENDED ACTION
<p>“Commercial Agreement between Qwest Corp. and Eschelon Telecom of Arizona, Inc.</p> <p>(QPP)</p>	<p>T-03406A-05-0288 T-01051B-05-0288</p>	<p>2-18-05</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 05-0081)</p> <p>Eschelon filed its application for approval of QPP agreement in Docket 05-0081 2-24-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and PiperTel Communications LLC”</p> <p>(QPP)</p>	<p>T-01051B-05-0268</p>	<p>Agreement given to Staff for informational purposes 2-24-05</p> <p>Staff letter to parties 4-1-05</p> <p>Staff docketed Agreement 4-12-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>
<p>“Commercial Agreement between Qwest Corp. and Ernest</p>	<p>T-01051B-05-0262 T-03631A-05-0262</p>	<p>Agreement given to Staff for informational purposes 3-10-05</p>	<p>Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540</p>

QWEST QPP AGREEMENTS

Revised 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.

DECISION NO. 68116

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	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540
“Commercial Agreement between Qwest Corp. and 1-800-Reconex Inc. dba USTel” (QPP)	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	Consolidate with Docket Nos. 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	Consolidate with Docket Nos. T-01051B-04-0540 T-03574A-04-0540

DECISION NO. 68116

QWEST QPP AGREEMENTS

Revised May 2, 2005

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