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ARIZONA CORPORATION COMMISSION

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DATE: OCTOBER 29, 2001

DOCKET NO: T-02811B-01-0456

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Lyn Farmer. The recommendation has been filed in the form of an Opinion and Order on:

QWEST COMMUNICATIONS CORPORATION
(TRANSFER CC&N)

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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 7, 2001

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 Commission's Working Session and Open Meeting to be held on:

TO BE DETERMINED

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

DOCKETED

OCT 29 2001

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER
5

6 IN THE MATTER OF THE APPLICATION OF
QWEST COMMUNICATIONS CORPORATION
7 FOR APPROVAL OF TRANSFER OF
CERTIFICATES OF AUTHORITY IN
8 ASSOCIATION WITH INTERNAL CORPORATE
RESTRUCTURING.

DOCKET NO. T-02811B-01-0456

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: October 18, 2001

10 PLACE OF HEARING: Phoenix, Arizona

11 PRESIDING ADMINISTRATIVE
12 LAW JUDGE: Lyn Farmer

13 APPEARANCES: FENNEMORE CRAIG, by Mr. Timothy Berg and Ms.
14 Darcy Renfro, on behalf of Applicants Qwest
15 Communications Corporation, Phoenix Networks, Inc.,
LCI International Telecom Corp., and USLD
Communications, Inc.; and

16 Mr. Christopher Kempley, Chief Counsel, Legal
17 Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

18 **BY THE COMMISSION:**

19 On June 4, 2001, Qwest Communications Corporation ("QCC"), its subsidiary Phoenix
20 Networks, Inc., dba Phoenix Telcom, Inc. and its affiliates LCI International Telecom Corp. dba
21 Qwest Communications Services and USLD Communications, Inc. filed a joint application
22 ("Application") with the Arizona Corporation Commission ("Commission") for approval of transfer
23 of Certificates of Convenience and Necessity ("CC&Ns"), assets, and customers in association with
24 internal corporate restructuring. The Application also requested Commission authority, to the extent
25 required, for certain mergers associated with Applicants' internal corporate restructuring, that the
26 Commission deem inapplicable or waive any applicable statutory or regulatory subscriber
27 authorization provisions regarding individual customer consent to the assignment of accounts in
28 connection with the restructuring, and that the Commission reaffirm the limited waiver of the

1 Commission's Affiliated Interests Rules previously granted by Commission Decision No. 58087
2 (November 23, 1992).

3 On October 5, 2001 a Procedural Order was issued in this matter setting a hearing for October
4 18, 2001.

5 On October 9, 2001, the Commission's Utilities Division staff ("Staff") filed a Staff Report in
6 this docket, and a hearing was held on this matter at the Commission's offices in Phoenix, Arizona on
7 October 18, 2001.

8 * * * * *

9 Having considered the entire record herein and being fully advised in the premises, the
10 Commission finds, concludes, and orders that:

11 **FINDINGS OF FACT**

12 1. QCC is a direct, wholly-owned subsidiary of Qwest Services Corporation, which, in
13 turn, is a direct, wholly-owned subsidiary of Qwest Communications International, Inc., the stock of
14 which is publicly traded on the New York Stock Exchange.¹ Pursuant to Commission Decision No.
15 60898 (May 22, 1998), QCC holds a CC&N in Arizona authorizing it to provide resold interLATA
16 and intraLATA services except for local exchange services. QCC also has an application pending
17 with the Commission to provide facilities-based long distance service (Docket No. U-2811-94-352).

18 2. Phoenix Network, Inc., dba Phoenix Telcom, Inc. ("Network") is a direct, wholly-
19 owned subsidiary of QCC. Pursuant to Commission Decision No. 60174 (May 16, 1997), Network
20 holds a CC&N authorizing it to provide resold interLATA and intraLATA services except for local
21 exchange services.

22 3. LCI International Telecom Corp. dba Qwest Communications Services ("LCI dba
23 QCS") is an affiliate of QCC. It is a subsidiary of LCI International, Inc., which is in turn a
24 subsidiary of Qwest Services Corporation, the parent of QCC. LCI dba QCS does not hold a CC&N
25 authorizing it to provide services in Arizona, but it has applications pending for CC&Ns authorizing
26 it to provide resold interexchange services and alternative operator services (Docket No. U-2717-96-
27

28 ¹ Prior to the merger of Qwest Communications International Inc. and U S WEST, Inc., Qwest Services Corporation was known as Qwest Corporation.

1 386) and resold toll service and alternative operator services (Docket No. U-2717-93-140).

2 4. USLD Communications, Inc. ("USLDCI") is also a subsidiary of LCI International,
3 Inc., which is in turn a subsidiary of Qwest Services Corporation, the parent of QCC. Pursuant to
4 Commission Decision No. 58210 (February 24, 1993), USLDCI holds a CC&N authorizing it to
5 provide alternative operator services.

6 5. On June 4, 2001, QCC, Network, LCI dba QCS, and USLDCI (collectively,
7 "Applicants") filed the Application with the Commission. The Applicants were parties to Docket No.
8 T-01051B-99-0947, in which the Commission issued Decision No. 62672 (June 30, 2000) approving
9 the merger of the Applicants' parent corporation, Qwest Communications International, Inc. and the
10 parent corporation of US WEST Communications, Inc., US WEST, Inc. Pursuant to that Decision,
11 and in order to comply with the Telecommunications Act of 1996, all Applicants' interLATA assets
12 were transferred to TeleDistance, Inc., which subsequently became Touch America Services, Inc.,
13 and the Applicants provided their customers with notice of the transfer.

14 6. The Application requests the following:

15 (a) Commission authority, to the extent required, for certain mergers associated with
16 Applicants' internal corporate restructuring. These mergers consist of the following: the merger into
17 QCC of its affiliate LCI dba QCS, the merger into QCC of its subsidiary Network, and the merger
18 into USLDCI of its parent USLD Communications Corp.;

19 (b) Commission approval, to the extent approval is required, of the transfer of CC&Ns
20 in connection with Applicants' internal corporate restructuring. The Applicants request that in each
21 case where a company will be merged into another company, the CC&N, if any, issued by the
22 Commission to the company that is being merged be transferred to the company into which it is
23 merging;

24 (c) That the Commission deem inapplicable or waive any applicable statutory or
25 regulatory subscriber authorization provisions regarding individual customer consent to the
26 assignment of accounts in connection with the restructuring; and

27 (d) Commission reaffirmation of the limited waiver of the Commission's Affiliated
28

1 Interests Rules previously granted by Commission Decision No. 58087 (November 23, 1992).²

2 7. Pursuant to the Commission's October 5, 2001 Procedural Order in this matter,
3 Applicants caused notice of the hearing on the Application to be published in the Arizona Republic
4 on October 7, 2001.

5 8. No motions to intervene were filed.

6 9. The Staff Report filed in this docket on October 9, 2001, recommended that the
7 Commission:

8 (a) Authorize the transfer of the CC&Ns to the acquiring entities;

9 (b) Waive any applicable statutory or regulatory subscriber authorization provisions
10 regarding individual customer consent to assignment of accounts in connection with the restructuring;

11 (c) Reaffirm the waiver in Decision No. 58087; and

12 (d) Hold a hearing.

13 10. A hearing was held on the Application on October 18, 2001. Mr. Reed Peterson, a
14 regulatory manager for Qwest Corporation³ provided testimony on behalf of the Applicants.

15 11. The ultimate ownership and control of QCC and all of its direct and indirect
16 subsidiaries and affiliates, including the Applicants, would be unchanged as a result of the proposed
17 internal restructuring, but of the four Applicants, only two entities would remain. Those two entities
18 would be QCC and USLDCI.

19 12. Qwest Corporation intends to make QCC its Section 272 affiliate, which will provide
20 interLATA services at such time that Qwest Communications International, Inc. and its affiliates
21 receive authorization to provide interLATA services pursuant to Section 271 of the
22 Telecommunications Act of 1996. QCC currently has the necessary Commission authority to provide
23 resold intraLATA and interLATA services, except local exchange services.

24 13. USLDCI currently has the necessary Commission authority to provide alternative
25 operator services ("AOS") in Arizona.

26 ² Applicants have not shown on the record that Decision Nos. 58087 or 62672 granted them a limited waiver of the
27 Commission's Affiliated Interests Rules.

28 ³ Qwest Corporation is the successor of US WEST Communications and is a direct subsidiary of Qwest Services
Corporation. Qwest Corporation is the Incumbent Local Exchange Carrier that provides local exchange service and other
telephone services in Arizona.

1 14. The Applicants' witness testified that no customers of the Applicants would be
2 affected by the proposed transaction, as all the Applicants' customers were transferred to Touch
3 America Services, Inc. at the time of the merger of Qwest Communications International, Inc. and US
4 WEST Inc.

5 15. The Applicants' witness also testified that Qwest Corporation's ability to provide
6 service in Arizona would not in any way be impacted by the proposed corporate reorganization.

7 16. Staff testified that the proposed transactions are in the public interest because there
8 will be no financial impact on the ratepaying public, the merger will be transparent to the public, and
9 the merger potentially reduces the workload of Staff and QCC and related entities, affiliates and
10 subsidiaries.

11 17. Associated with the proposed merger of Network into QCC, the Application requests
12 authority to transfer Network's customers and assets to QCC, and for service to be provided under
13 QCC's tariff. The application states that the tariff of Network would be adopted by QCC or
14 consolidated into the QCC tariff.

15 18. Network currently has the necessary Commission authority to provide resold
16 interLATA and intraLATA services except for local exchange services. QCC currently holds
17 authority to provide the same services.

18 19. Because Network has no customers at this time, none of Network's customers will be
19 transferred to QCC in association with the proposed restructuring, and no individual customer
20 consent to the assignment of accounts in connection with the restructuring is required.

21 20. Prior to Commission approval of Network's tariff being adopted by QCC or
22 consolidated into the QCC tariff as proposed, Network's tariff requires review in order for the
23 Commission to determine whether it remains appropriate in light of the fact that Qwest Corporation
24 plans to offer competitive interLATA services through QCC as its Section 272 affiliate under that
25 tariff. Suspension of Network's tariff pending such review in order to allow time for Staff to make a
26 recommendation to the Commission regarding the tariff will pose no hardship to the Applicants, as
27 Network currently has no customers.

28 21. Associated with the proposed merger into QCC of its affiliate LCI dba QCS, the

1 Application requests authority to transfer LCI dba QCS' customers and assets to QCC, and for
2 service to be provided after the merger under QCC's tariff. The application states that the tariff of
3 LCI dba QCS would be adopted by QCC or consolidated into the QCC tariff.

4 22. Because LCI dba QCS has no customers at this time, none of LCI dba QCS'
5 customers will be transferred to QCC in association with the proposed restructuring, and no
6 individual customer consent to the assignment of accounts in connection with the restructuring is
7 required.

8 23. LCI dba QCS does not hold a CC&N authorizing it to provide services in Arizona, and
9 has no tariff for adoption by QCC or for or consolidation into the QCC tariff.

10 24. LCI dba QCS currently has an application pending with the Commission for a CC&N
11 authorizing it to provide resold interexchange services and alternative operator services (Docket No.
12 U-2717-96-386). It also has an application currently pending with the Commission for a CC&N
13 authorizing it to provide resold toll service and alternative operator services (Docket No. U-2717-93-
14 140). A status report is required in order for the Commission to determine the proper course of action
15 in those dockets.

16 25. Associated with the proposed merger into USLDCI of its parent, USLD
17 Communications Corp., the Application requests authority to transfer the assets of USLD
18 Communications Corp. to USLDCI, leaving USLDCI as the surviving entity.

19 26. Because neither USLD Communications Corp. nor USLDCI have any customers at
20 this time, no customers will be transferred, and no individual customer consent to the assignment of
21 accounts in connection with the restructuring is required.

22 27. QCC's current tariff requires review in order for the Commission to determine
23 whether it remains appropriate in light of the fact that Qwest Corporation plans to offer competitive
24 interLATA services through QCC as its Section 272 affiliate. Suspension of QCC's tariff pending
25 such review in order to allow time for Staff to make a recommendation to the Commission regarding
26 the tariff will pose no hardship to the Applicants, as QCC currently has no customers.

27 28. QCC currently has an application pending with the Commission to provide facilities-
28 based long distance service (Docket No. U-2811-94-352). A status report is required in order for the

1 Commission to determine the proper course of action in that docket.

2 29. On November 23, 1992, in Commission Decision No. 58087, the Commission granted
3 to US WEST Communications, Inc. a limited waiver of compliance with the Commission's Affiliated
4 Interests Rules pursuant to A.A.C. R14-2-806, which specifically allows affected entities to request
5 waivers from all or portions of the Affiliated Interests Rules. More specifically, Decision No. 58087
6 granted US WEST Communications, Inc. a limited waiver of A.A.C. R14-2-803.

7 30. In granting the limited waiver of A.A.C. R14-2-803, Decision No. 58087 ordered US
8 WEST Communications, Inc., its parent US WEST Inc., and all affiliates of US WEST
9 Communications, Inc. not regulated by the Commission, to file a notice of intent to organize or
10 reorganize a public utility holding company only for those organizations or reorganizations which are
11 likely to: 1) result in increased capital costs to US WEST Communications, Inc.; 2) result in
12 additional costs allocated to the Arizona jurisdiction; or 3) result in a reduction of US WEST
13 Communications, Inc.'s net operating income.

14 31. In granting the limited waiver of A.A.C. R14-2-803, Decision No. 58087 also ordered
15 US WEST Communications, Inc., to file annually, at the time it provides the information required by
16 A.A.C. R14-2-805, an affidavit from its Chief Executive Officer which lists the transactions for
17 which US WEST Communications, Inc., its parent US WEST Inc., or any affiliate of US WEST
18 Communications, Inc. not regulated by the Commission, has not filed a notice of intent pursuant to
19 the limited waiver granted by the Decision, and which certifies that such transactions will not result
20 in either increased capital costs to US WEST Communications, Inc., additional costs being allocated
21 to the Arizona jurisdiction, or a reduction of US WEST Communications, Inc.'s net operating
22 income.

23 32. Qwest Corporation intends to commence provision of competitive interLATA services
24 through QCC as its Section 272 affiliate at such time that Qwest Communications International, Inc.
25 and its affiliates receive authorization to provide interLATA services pursuant to Section 271 of the
26 Telecommunications Act of 1996. This presents a different set of facts than those that informed the
27 Commission in Decision No. 58087.

28 33. Prior to any Commission reaffirmation of the waiver granted in Decision No. 58087,

1 the purpose of and requirements of the limited waiver granted to US WEST Communications, Inc. in
2 Decision No. 58087 require review based on current facts and the current status of the
3 telecommunications industry in light of the Telecommunications Act of 1996.

4 **CONCLUSIONS OF LAW**

5 1. Qwest Communications Corporation, its subsidiary Phoenix Networks, Inc., dba
6 Phoenix Telcom, Inc. and its affiliates LCI International Telecom Corp. dba Qwest Communications
7 Services and USLD Communications, Inc. are public service corporations within the meaning of
8 Article XV of the Arizona Constitution.

9 2. The Commission has jurisdiction over Qwest Communications Corporation, its
10 subsidiary Phoenix Networks, Inc., dba Phoenix Telcom, Inc. and its affiliates LCI International
11 Telecom Corp. dba Qwest Communications Services and USLD Communications, Inc. and the
12 subject matter of the Application pursuant to A.R.S. § 40-285 and A.A.C. R14-2-801 *et seq.*

13 3. As conditioned herein, approval of the transfer of Network's assets and Network's
14 CC&N to QCC is in the public interest.

15 4. As conditioned herein, approval of the transfer of LCI dba QCS' assets to QCC is in
16 the public interest.

17 5. Approval of the transfer of USLD Communications Corp.'s assets to USLDCI is in the
18 public interest.

19 6. The pending applications of LCI dba QCS to provide resold interexchange services
20 and alternative operator services (Docket No. U-2717-96-386) and resold toll service and alternative
21 operator services (Docket No. U2717-93-140) should be reviewed based on the Findings of Fact in
22 this Decision, and the Commission should be provided with recommendations as to the proper course
23 of action in those dockets.

24 7. The pending application of QCC in Docket No. U-2811-94-352 to provide facilities-
25 based long distance service should be reviewed based on the Findings of Fact in this Decision, and
26 the Commission should be provided with recommendations as to the proper course of action in that
27 docket.

28 8. As a condition of approval of the transfer of Network's assets and CC&N to QCC and

1 of the transfer of LCI dba QCS' assets to QCC, QCC's current tariff should be suspended pending an
2 analysis of whether QCC's current tariff remains appropriate in light of the fact that Qwest
3 Corporation plans to offer competitive interLATA services through QCC as its Section 272 affiliate,
4 and Commission action regarding the tariff based on that analysis.

5 9. As a condition of approval of the transfer of Network's assets and CC&N to QCC,
6 Network's current tariff should be suspended pending an analysis of whether QCC's proposed
7 adoption of or consolidation of Network's tariff remains appropriate in light of the fact that Qwest
8 Corporation plans to offer competitive interLATA services through QCC as its Section 272 affiliate,
9 and Commission action regarding the tariff based on that analysis.

10 10. Prior to a Commission determination of whether the limited waiver of A.A.C. R14-2-
11 803 granted in Decision No. 58087 to US WEST Communications, Inc. remains appropriate for
12 Qwest Communications International, Inc. and its affiliates, the Commission should be provided with
13 an analysis of the effects of a waiver of the Affiliated Interests Rules in light of subsequent changes
14 in the telecommunications industry, specifically competition under the Telecommunications Act of
15 1996, and with recommendations as to the proper course of action based on current facts, including
16 the fact that Qwest Corporation intends to commence provision of competitive interLATA services
17 through QCC as its Section 272 affiliate at such time that Qwest Communications International, Inc.
18 and its affiliates receive authorization to provide interLATA services pursuant to Section 271 of the
19 Telecommunications Act of 1996.

20 11. As there are no existing Arizona customers of any of the Applicants, no individual
21 customer consent to the assignment of accounts in connection with the restructuring is required.

22 **ORDER**

23 IT IS THEREFORE ORDERED that the proposed transfer of Phoenix Network, Inc., dba
24 Phoenix Telcom, Inc.'s assets and Certificate of Convenience and Necessity to Qwest
25 Communications Corporation is hereby approved subject to the suspension of Phoenix Network, Inc.,
26 dba Phoenix Telcom, Inc.'s and Qwest Communications Corporation's tariffs pending Commission
27 action on those tariffs.

28 IT IS FURTHER ORDERED that the proposed transfer of LCI International Telecom Corp.

1 dba Qwest Communications Services' assets to Qwest Communications Corporation is hereby
2 approved subject to the suspension of Phoenix Network, Inc., dba Phoenix Telcom, Inc.'s and Qwest
3 Communications Corporation's tariffs pending Commission action on those tariffs.

4 IT IS FURTHER ORDERED that the proposed transfer of USLD Communications Corp.'s
5 assets to USLD Communications, Inc. is hereby approved.

6 IT IS FURTHER ORDERED that no individual customer consent to the assignment of
7 accounts in connection with the restructuring is required in this matter.

8 IT IS FURTHER ORDERED that Staff shall review the pending application of Qwest
9 Communications Corporation in Docket No. U-2811-94-352 to provide facilities-based long distance
10 service, and file in that docket, within 60 days of this Decision, status reports on the application and
11 recommendations to the Commission as to the proper course of action in that docket.

12 IT IS FURTHER ORDERED that Staff shall review the pending applications of LCI
13 International Telecom Corp. dba Qwest Communications Services in Docket Nos. U-2717-93-140
14 and U-2717-96-386 and file in those dockets, within 60 days of this Decision, a status report on the
15 applications and recommendations to the Commission as to the proper course of action in those
16 dockets.

17 IT IS FURTHER ORDERED that as a condition of approval of the Application, Qwest
18 Communications Corporation's current tariff is hereby suspended pending Commission action
19 regarding Phoenix Network, Inc., dba Phoenix Telcom, Inc.'s and Qwest Communications
20 Corporation's tariffs.

21 IT IS FURTHER ORDERED that that Staff shall review Qwest Communications
22 Corporation's current tariff and conduct an analysis of whether it remains appropriate in light of the
23 fact that Qwest Corporation plans to offer competitive interLATA services through Qwest
24 Communications Corporation as its Section 272 affiliate. Staff shall provide the Commission with
25 that analysis and recommendations based on that analysis as to the proper course of action regarding
26 Qwest Communications Corporation's tariff in the form of a Staff Report filed in this docket within
27 45 days of this Decision.

28 IT IS FURTHER ORDERED that as a condition of approval of the Application, Phoenix

1 Network, Inc., dba Phoenix Telcom, Inc.'s current tariff is hereby suspended pending Commission
2 action regarding Phoenix Network, Inc., dba Phoenix Telcom, Inc.'s and Qwest Communications
3 Corporation's tariffs.

4 IT IS FURTHER ORDERED that that Staff shall review Phoenix Network, Inc., dba Phoenix
5 Telcom, Inc.'s current tariff and conduct an analysis of whether Qwest Communications
6 Corporation's proposed adoption of or consolidation of Phoenix Network, Inc., dba Phoenix Telcom,
7 Inc.'s tariff remains appropriate in light of the fact that Qwest Corporation plans to offer competitive
8 interLATA services through whether Qwest Communications Corporation as its Section 272 affiliate.
9 Staff shall provide the Commission with that analysis and recommendations based on that analysis as
10 to the proper course of action regarding Network's tariff and Qwest Communications Corporation's
11 proposed adoption of or consolidation of Phoenix Network, Inc., dba Phoenix Telcom, Inc.'s tariff, in
12 the form of a Staff Report filed in this docket within 60 days of this Decision.

13 IT IS FURTHER ORDERED that the request for Commission reaffirmation of the limited
14 waiver of the Commission's Affiliated Interests Rules previously granted to US WEST
15 Communications, Inc. by Commission Decision No. 58087 (November 23, 1992) is not granted at
16 this time.

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1 IT IS FURTHER ORDERED that that Staff shall review and analyze the purpose of and
 2 requirements of the limited waiver granted in Decision No. 58087 and provide the Commission with
 3 an analysis regarding whether the limited waiver of A.A.C. R14-2-803 granted in Decision No.
 4 58087 to US WEST Communications, Inc. is appropriate for Qwest Communications International,
 5 Inc. and its affiliates in light of the fact that Qwest Corporation intends to commence provision of
 6 competitive interLATA services through its affiliate Qwest Communications Corporation at such
 7 time that Qwest Communications International, Inc. and its affiliates receive authorization to provide
 8 interLATA services pursuant to Section 271 of the Telecommunications Act of 1996. Staff shall
 9 provide the Commission with that analysis and recommendations based on that analysis in the form
 10 of a Staff Report filed in this docket, within 60 days of this Decision.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2001.

 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

DISSENT _____

1 SERVICE LIST FOR:

QWEST COMMUNICATIONS CORPORATION

2 DOCKET NO.

T-02811B-01-0456

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4 Timothy Berg
5 FENNEMORE CRAIG
6 3003 N. Central Avenue, Suite 2600
7 Phoenix, Arizona 85012
8 Attorneys for Qwest Communications Corp.

9 Christopher Kempley, Chief Counsel
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Ernest G. Johnson, Director
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007

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