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BEFORE THE ARIZONA CORPORATION COMMISSION

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2 **MIKE GLEASON**  
Chairman  
3 **WILLIAM MUNDELL**  
Commissioner  
4 **JEFF HATCH-MILLER**  
Commissioner  
5 **KRISTIN MAYES**  
Commissioner  
6 **GARY PIERCE**  
Commissioner  
7

2008 FEB 22 P 4: 07  
AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
**DOCKETED**  
FEB 22 2008

DOCKETED BY  
NR

8 **IN THE MATTER OF COX ARIZONA**  
**TELCOM, L.L.C.'S PETITION FOR**  
9 **ARBITRATION WITH QWEST**  
10 **CORPORATION PURSUANT TO SECTION**  
11 **252 OF THE TELECOMMUNICATIONS**  
12 **ACT OF 1996.**

Docket Nos. T-03471A-07-0242  
T-01051B-07-0242

**QWEST CORPORATION'S**  
**RESPONSE IN OPPOSITION TO**  
**STAFF'S MOTION TO**  
**CONSOLIDATE HEARING ON**  
**SETTLEMENT AGREEMENTS**

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15 Qwest Corporation ("Qwest") hereby files its response in opposition to Staff's Motion to  
16 Consolidate Hearing on Settlement Agreements ("Staff's Motion").

17 The Staff's Motion asks that the Commission consolidate for hearing a partial settlement  
18 of this arbitration proceeding ( which was instituted under Section 252 of the  
19 Telecommunications Act of 1996 to establish forward-looking terms and conditions for  
20 interconnection between Qwest and Cox ), with a hearing on the settlement of a complaint  
21 proceeding (Docket Nos. T-01051B-06-0045 and T-03471A-06-0045, "Complaint") that was  
22 brought by Qwest for enforcement of the interconnection agreement as it existed at the time the  
23 Complaint was filed. The Staff filed an identical motion in the Complaint proceeding, and Qwest  
24 has filed its Response in Opposition, a copy of which is attached hereto, marked as Attachment A.  
25  
26

1 Qwest opposes the motion in the instant proceeding for the same reasons stated in  
2 Attachment A, which is incorporated herein by reference.

3 Additionally, Qwest states that the partial settlement of the Arbitration, which settled  
4 arbitration issues 8 through 15, is now effective. The ICA amendment that implements the partial  
5 settlement of the Arbitration is already approved, because more than thirty days have elapsed  
6 since the date the amendment was filed for approval. A.A.C. R14-2-1508 states:

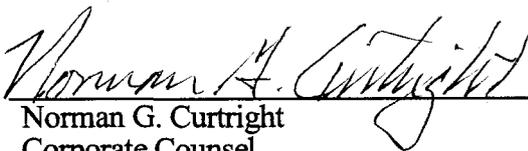
7 Any amendments to an interconnection agreement shall be filed with the  
8 Commission and, if not rejected by the Commission within 30 days of filing, such  
amendment agreements will become effective.

9 Qwest filed notice of the settlement in the arbitration, and as required by Section 252(e)  
10 of the Act filed the amendment for approval on October 25, 2007. No further action by  
11 the Commission having been taken, the ICA amendment was deemed approved thirty  
12 days later. Accordingly, arbitration issues 8-15 are closed. There is not anything before  
13 the arbitrator to be heard on those issues, and thus nothing to consolidate with the  
14 Complaint.

15 For the foregoing reasons, the Staff's motion to consolidate should be denied.

16 RESPECTFULLY SUBMITTED this 22nd of February, 2008.

17 QWEST CORPORATION

18  
19 By: 

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1 **ORIGINAL and 13 copies hand-delivered**  
2 **for filing this 22nd of February, 2008, to:**

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington Street  
6 Phoenix, AZ 85007

7 **COPY of the foregoing hand delivered**  
8 **this 22nd of February, 2008, to:**

9 Jane Rodda, Administrative Law Judge  
10 Hearing Division  
11 ARIZONA CORPORATION COMMISSION  
12 1200 W. Washington Street  
13 Phoenix, AZ 85007

14 Maureen A. Scott, Esq.  
15 Legal Division  
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19 Ernest Johnson  
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Diane Kipma

# **ATTACHMENT A**

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**MIKE GLEASON**  
Chairman  
**WILLIAM MUNDELL**  
Commissioner  
**JEFF HATCH-MILLER**  
Commissioner  
**KRISTIN MAYES**  
Commissioner  
**GARY PIERCE**  
Commissioner

**QWEST CORPORATION,**  
  
Complainant,  
  
v.  
**COX ARIZONA TELCOM, LLC,**  
  
Respondent.

Docket Nos. T-01051B-06-0045  
T-03471A-06-0045

**QWEST CORPORATION'S  
RESPONSE IN OPPOSITION TO  
STAFF'S MOTION TO  
CONSOLIDATE HEARING ON  
SETTLEMENT AGREEMENTS**

Qwest Corporation ("Qwest") hereby files its response to Staff's Motion to Consolidate Hearing on Settlement Agreements ("Staff's Motion").

**I. Staff's Motion Is an End Run Around the ALJ's Ruling During the February 14, 2008 Procedural Conference**

On February 14, 2008, the ALJ held a procedural conference in the Complaint Docket, *Qwest Corp. v. Cox Arizona Telcom, LLC*, Docket Nos. T-01051B-06-0045, T-03471A-06-0045 (the "Complaint Docket") to discuss the issues and timing for a hearing to examine whether the "Confidential Settlement Agreement and Mutual Release – Arizona Complaint Proceeding" ("Complaint Settlement Agreement") reached by Qwest and Cox adequately resolved the narrow public interest issues raised in Qwest's Complaint. As Staff notes, the ALJ in the conference

1 issued an expedited schedule for hearing, so that Qwest and Cox can proceed with the  
2 implementation of the settlement.

3 Staff repeats in Staff's Motion the same arguments that were raised and rejected at that  
4 conference – that the hearing in the Complaint Docket should also consider the propriety of a  
5 separate settlement reached between Qwest and Cox, resolving a number of issues that arose in a  
6 separate arbitration proceeding<sup>1</sup> initiated by Cox to establish a new interconnection agreement.  
7 (The separate settlement of the Arbitration Docket is referred to herein as the “Arbitration  
8 Agreement”). Whereas the Complaint Settlement Agreement sought to resolve contract disputes  
9 about the old ICA language, the Arbitration Agreement set a new framework for how Qwest and  
10 Cox would address these issues going forward. This new framework was not at issue in the  
11 Complaint Docket, because it did not exist when the Complaint was filed, and indeed, Qwest only  
12 sought in its Complaint that Cox be held to existing interconnection obligations. As Qwest noted  
13 at the conference, the amendment that the parties signed as a product of the Arbitration  
14 Agreement renders moot the questions of what the parties' prospective contract obligations were  
15 under the old ICA language. The old agreement language no longer exists as such.

16 The ALJ during the February 14 procedural conference agreed that the issues for hearing  
17 should be limited to the narrow public interest issues raised by the Complaint, rather than any  
18 additional issues Staff may identify with respect to the Arbitration Agreement. In a Procedural  
19 Order entered on February 19, 2008, the ALJ confirmed that “[t]he purpose of the hearing is to  
20 address the issues raised in Qwest's Complaint and the Settlement Agreement resolving those  
21 issues.” (P. 3, lines 12-14).

22 Apparently not satisfied with this ruling, Staff's Motion essentially ignores it. Instead,  
23 Staff states that it “anticipates that issues will come up on the Arbitration Settlement Agreement  
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25 <sup>1</sup> *In the Matter of Cox Arizona Telcom, LLC's Petition for Arbitration with Qwest Corporation*  
26 *Pursuant to Section 252 of the Telecommunications Act of 1996*, Docket Nos. T-03471A-07-0242, T-  
01051B-07-0242 (the “Arbitration Docket”).

1 during the hearing on the Complaint Settlement...” (Staff Motion, p. 1) The Staff therefore  
2 requests “consolidation.” The only reason that these issues will “come up” is if Staff raises them,  
3 which would be directly contrary to the ALJ’s ruling during the procedural conference.

4 **II. In any Event, Any Issues Staff Has with Respect to the Arbitration Agreement Are**  
5 **Improper for the Complaint Hearing.**

6 As Qwest explained its *Response to Staff’s Report on Settlement*, filed on February 11,  
7 2008, the Complaint Docket issues were narrow and did not involve the new terms embodied by  
8 the Arbitration Agreement. In fact, many of the issues identified by Staff are hypothetical.  
9 Moreover, the ICA amendment implementing the Arbitration Agreement has already gone into  
10 effect by operation of law, making any such review improper anyway. For these additional  
11 reasons, the hearing in the Complaint Docket should not be belabored by dedicating resources to  
12 examining these issues.

13  
14 **III. Conclusion**

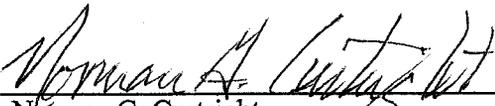
15  
16 The hearing in this Complaint Docket should not be turned into a free-for-all, where any  
17 issues related to subloop connectivity are examined.<sup>2</sup> Indeed, Qwest does not believe that a  
18 hearing is even necessary, as the only issues concerning the public interest were generally agreed  
19 upon by the parties during the Phase I hearing (with the exception of Qwest’s demand for an  
20 independent auditor, which Qwest no longer seeks). But, as recognized by the ALJ, since a  
21 hearing will be held, it should be limited to the issues presented in the Complaint.

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24 <sup>2</sup> Staff notes that the Arbitration Agreement was “filed” in the Complaint Docket.  
25 However, as Qwest stated during the procedural conference, this “filing” was not for approval but  
26 rather was only to provide the ALJ with complete visibility into the issues Qwest and Cox had  
resolved. By filing this agreement in this docket for the ALJ’s information, Qwest and Cox were  
not seeking examination and approval of the agreement any more than they would if they filed  
any other type of evidence or exhibit with the Commission.

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RESPECTFULLY SUBMITTED this 22nd of February, 2008.

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10 Hearing Division  
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15 Legal Division  
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Diana Kypar