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ORIGINAL

MEMORANDUM

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TO: Docket Control
FROM: Ernest G. Johnson
Director
Utilities Division

EA for EGJ

DATE: September 15, 2008

RE: STAFF REPORT FOR THE JOINT APPLICATION OF ACCIPITER COMMUNICATIONS, INC. AND QWEST CORPORATION FOR ACCIPITER TO EXTEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY AND TO DELETE A PORTION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN FAVOR OF QWEST AND FOR QWEST TO EXTEND ITS SERVICE AREA AND DELETE A PORTION OF ITS SERVICE AREA IN FAVOR OF ACCIPITER ("JOINT APPLICATION") (DOCKET NOS. T-02847A-08-0164 AND T-01051B-08-0164)

Attached is the Staff Report for Accipiter Communications, Inc.'s Application to amend its Certificate of Convenience and Necessity in Maricopa County and for Qwest Corporation's Application to amend its service area.

Staff recommends that the Commission find that approval of the exchange of service areas identified in the Joint Application is in the public interest. Staff further recommends that:

1. The Companies be required to update their respective service area maps on file with the Commission within sixty (60) days of a Decision granting the Joint Application,
2. The Companies be authorized to apply their respective tariffed rates and charges to the service areas that are approved to be exchanged, and
3. An ordering clause be included which states that the Commission does not object to the grant of a waiver by the FCC of the Study Area boundary freeze that would allow Accipiter and Qwest to modify their respective Study Areas consistent with the changes authorized by the Commission.

EGJ:RLB:red

Originator: Richard Boyles

Arizona Corporation Commission

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Docket Nos. T-02847A-08-0164 and T-010151B-08-0164

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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

**ACCIPITER COMMUNICATIONS, INC.
DOCKET NOS. T-02847A-08-0164**

AND

**QWEST CORPORATION
DOCKET NO. T-01051B-08-1064**

**IN THE MATTER OF THE JOINT APPLICATION OF ACCIPITER
COMMUNICATIONS, INC. AND QWEST CORPORATION FOR ACCIPITER TO
EXTEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY AND TO
DELETE A PORTION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY
IN FAVOR OF QWEST AND FOR QWEST TO EXTEND ITS SERVICE AREA AND
DELETE A PORTION OF ITS SERVICE AREA IN FAVOR OF ACCIPITER**

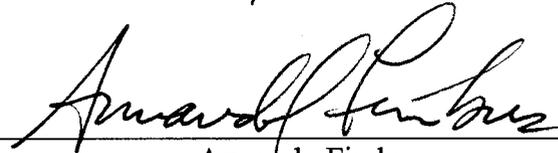
SEPTEMBER 15, 2008

STAFF ACKNOWLEDGMENT

The Staff Report for the Joint Application of Accipiter Communications, Inc. and Qwest Corporation (Docket Nos. T-02847A-08-0164 and T-01051B-08-0164) was the responsibility of the Staff members listed below.



Richard Boyles
Utilities Engineer—Telecommunications



Armando Fimbres
Public Utilities Analyst V

EXECUTIVE SUMMARY
ACCIPITER COMMUNICATIONS, INC.
QWEST CORPORATION
DOCKET NOS. T-02847A-08-0164 AND T-01051B-01-0164

On March 18, 2008, Accipiter Communications, Inc., dba Zona Communications ("Accipiter" or "Zona") and Qwest Corporation ("Qwest") (collectively the "Companies") jointly filed an Application ("Joint Application") that, in general, requested approval for the transfer of certain portions of their respective service areas in the Phoenix metropolitan area from each company to the other, approval for the companies to charge their respective tariffed rates and charges in the transferred areas and a statement that the Commission does not object to the Federal Communications Commission ("FCC") granting a waiver to the Study Area boundary freeze so the companies could modify their respective study areas.

The Zona Extension area primarily covers a proposed development referred to as the Lake Pleasant 5000 property. However it also includes three and one half sections north of the Lake Pleasant 5000 property to "square off" Accipiter's CC&N area. Qwest states it does not have facilities to serve the Zona Extension Area. Accipiter states it can readily extend facilities from its adjacent Lake Pleasant Exchange. Further, Accipiter states it has had preliminary discussions with a developer who intends to develop within the Lake Pleasant 5000 property and who is interested in receiving service from Accipiter.

The Qwest Extension Area is bounded by the White Tank Mountain Regional Park to the west and Qwest service area to the south and east. Accipiter currently has no customers or facilities in this area. Qwest states in part that it has identified one customer located within Township 3 North, Range 2 West, Section 29. Qwest further states that it "discovered it was providing service at this location in approximately July of 2007, at which time it notified Accipiter of the situation and proposed that Accipiter transfer this section to Qwest concurrent with the proposed transfer of the Lake Pleasant 5000 area to Accipiter." Qwest also states that it had been providing service to this customer prior to the section becoming part of Accipiter's CC&N area.

The approved rates and charges for both Companies apply uniformly across the entirety of their respective service areas. The difference in basic service rates would only impact future customers as development occurs. The one existing customer located in the proposed Qwest Extension Area would not be impacted because this customer currently is charged Qwest rates. With respect to the Zona Extension Area, it is Staff's understanding that Accipiter has informed the developer of the difference in basic service rates and also stated to the developer that when Accipiter's basic service is bundled with calling features its rates are generally lower than Qwest's comparable bundles.

Staff recommends that the Commission find that approval of the exchange of service areas identified in the Joint Application is in the public interest. Staff further recommends that:

- 1: The Companies being required to update their respective service area maps on file with the Commission within sixty (60) days of a Decision granting the Joint Application,
2. The Companies be authorized to apply their respective tarriffed rates and charges to the service areas that are approved to be exchanged, and
3. An ordering clause be included which states that the Commission does not object to the grant of a waiver by the FCC of the Study Area boundary freeze that would allow Accipiter and Qwest to modify their respective Study Areas consistent with the changes authorized by the Commission.

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ATTACHMENTS

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I. Procedural History

On March 18, 2008, Accipiter Communications, Inc., dba Zona Communications ("Accipiter" or "Zona") and Qwest Corporation ("Qwest") (collectively the "Companies") jointly filed an Application ("Joint Application") that, in general, requested approval for the transfer of certain portions of their respective service areas in the Phoenix metropolitan area from each company to the other, approval for the companies to charge their respective tariffed rates and charges in the transferred areas and a statement that the Commission does not object to the Federal Communications Commission ("FCC") granting a waiver to the Study Area boundary freeze so the companies could modify their respective study areas.

On April 15, 2008, Staff issued a Letter of Insufficiency with a First Set of Data Requests to Accipiter and Qwest.

On May 9, 2008 and May 14, 2008 respectively, Qwest and Accipiter filed their responses to the First Set of Data Requests.

On June 11, 2008, Staff issued a Second Letter of Insufficiency with a Second Set of Data Requests to Accipiter.

On June 23, 2008, Accipiter filed its response to the Second Set of Data Requests.

On July 23, 2008, Staff issued a Letter of Sufficiency on Accipiter and Qwest's Joint Application.

On July 25, 2008, a Procedural Order was issued scheduling a hearing on the Joint Application and establishing other deadlines.

On July 30, 2008, Accipiter filed a Motion to Modify Procedural Schedule requesting that the hearing be continued for at least 10 days because Accipiter's counsel had a previously scheduled out-of-state commitment.

On July 30, 2008, a Procedural Order was issued re-scheduling the hearing on the Joint Application and establishing other deadlines consistent with the new hearing date.

II. Background

Accipiter was granted a CC&N by the Commission in Decision No. 59346, dated October 11, 1995, to provide local exchange carrier services in portions of Maricopa and Yavapai Counties, including Castle Hot Springs and Lake Pleasant Regional Park. In Decision No. 67574, dated February 15, 2005, the Commission approved the transfer of four sections from Qwest's service area to Accipiter to enable Accipiter to provide service to the entirety of a

master planned community generally known as Vistancia.¹ In Decision No. 67675, dated March 9, 2005, Accipiter's Certificate of Convenience and Necessity ("CC&N") was extended to include previously unserved area located southwest of, but not contiguous to, Accipiter's existing CC&N area.² At the time of the filing of this Joint Application, Accipiter was providing services to approximately 116 customers with approximately 191 access lines.³

Qwest predecessor companies were providing telephony service in Arizona prior to statehood and enactment of the Constitution. As such, Qwest does not hold a CC&N but instead files service area maps which are incorporated into its tariff and approved by the Commission. At the end of June 2008, Qwest was providing service to approximately 1.5 million access lines.⁴

The Corporations Division reported on August 19, 2008 that Accipiter and Qwest are in good standing. According to the Utilities Division Consumer Services Section, as of August 19, 2008 no complaints, inquiries or opinions were filed regarding the Joint Application. In addition, the Utilities Division Compliance Section stated that there were no delinquencies for either Accipiter or Qwest.

III. Staff Analysis of Areas to be Exchanged

A. From Qwest to Accipiter ("*Zona Extension Area*")⁵

The Joint Application identifies the area requested to be transferred from Qwest's service area to that of Accipiter as Township 6 North, Range 2 West, Sections 4, 5, 6, 7, 8, 9, 17 and 18 and Township 7 North, Range 2 West, Sections 31, 32, 33 and the western half of 34.⁶ It is Staff's understanding from the parties that wireless service in this area may be marginal at best.

The Zona Extension area primarily covers a proposed development referred to as the Lake Pleasant 5000 property.⁷ However it also includes three and one half sections⁸ north of the Lake Pleasant 5000 property to "square off" Accipiter's CC&N area. Qwest states it does not have facilities to serve the Zona Extension Area. Accipiter states it can readily extend its facilities from its adjacent Lake Pleasant Exchange. Further, Accipiter states it has had preliminary discussions with a developer who intends to construct within the Lake Pleasant 5000 property and who is interested in receiving service from Accipiter.⁹ In Accipiter's response to STF 1.2, Accipiter provided a copy of a letter from Christopher J. Cacheris stating in part that he "would like to confirm Harvard Investments acceptance of the offer to serve the Lake Pleasant 5000 area."

¹ Accipiter began providing service to customers in Vistancia in February, 2007.

² Accipiter began providing service to customers in its Sun Valley service area in November, 2007.

³ As of July 31, 2007, this had increased to 161 customers with 289 access lines.

⁴ Qwest Second Quarter 2008 Arizona Service Quality Report.

⁵ See Attachment 1 map.

⁶ Joint Application at page 4.

⁷ Previously known as the GW Holdings property.

⁸ Township 7 North, Range 2 West, Sections 31, 32, 33 and the western half of 34.

⁹ Joint Application at page 3.

In Qwest's response to STF 1.11, Qwest states in part that it "has no facilities in that area and no agreements with any potential developers to provide facilities." Qwest also states that "both parties are willing participants to the [Zona Extension Area] transfer and it involves only boundary changes, i.e. no existing customers or facilities are affected by the proposal." Staff would note that the area code for the Zona Extension Area would change from 623 to 928 but this would have no effect on the scope of the local calling area for future customers as Accipiter's exchanges are part of the Phoenix local calling area.¹⁰

In response to STF 2.5, Accipiter states in part that it "plans to begin construction in early 2009 of an inter-exchange fiber-optic cable route from the company's network at Quintero westward along highway 74 to our Sun Valley service area. This fiber optic cable, which is planned regardless of the status of the Lake Pleasant 5000 development, will pass within one mile of the development's southern boundary. Zona will plan access points along this fiber route so that when the highway 74 access for the development is constructed Zona will splice in the fiber route to extend facilities northward within the developer-defined public utility right-of-way." Accordingly, Staff believes it should be relatively easy for Accipiter to extend service into the Zona Extension Area.

In Decision No. 68913, dated August 29, 2006, the Commission approved a financing application for Accipiter. One of the ordering paragraphs of that Decision states:

"IT IS FURTHER ORDERED that, in accordance with Staff's recommendation, Accipiter Communications, Inc. shall file a CC&N extension application for the GW Holdings property within 24 months of this Decision as a condition of being permitted to draw on the loan for the \$2,061,400 that the Company projects is needed for infrastructure to service the GW Holdings property."

The request in the Joint Application to transfer the Zona Extension Area from Qwest to Accipiter meets the requirements of the ordering paragraph in Decision No. 68913. Staff recognizes that the Zona Extension Area includes an additional three and one-half sections to the north of the Lake Pleasant 5000 property to "square off" Accipiter's CC&N area. However Staff believes this is a reasonable addition in that it should be less costly for Accipiter to provide service to those sections than it would be for Qwest. Staff recommends that the transfer of the Zona Extension Area from Qwest to Accipiter be approved.

B. From Accipiter to Qwest ("Qwest Extension Area")¹¹

The Joint Application identifies the area requested to be transferred from Accipiter's service area to that of Qwest as Township 3 North, Range 2 West, Sections 29 and 32, the

¹⁰ Since Accipiter exchanges in the 928 NPA are in a different rate center from Qwest in the 623 NPA, there is a restriction on number portability between the two service areas.

¹¹ See Attachment 1 map.

western half of 28 and the southeast quarter of 31.¹², ¹³ It is Staff's understanding from the parties that wireless service in this area may be marginal at best.

Accipiter currently has no customers or facilities in this area.¹⁴ The area is bounded by the White Tank Mountain Regional Park to the west and Qwest service area to the south and east. In response to STF 1.5, Qwest states in part that it has identified one customer located within Township 3 North, Range 2 West, Section 29. Qwest further states that it "discovered it was providing service at this location in approximately July of 2007, at which time it notified Accipiter of the situation and proposed that Accipiter transfer this section to Qwest concurrent with the proposed transfer of the Lake Pleasant 5000 area to Accipiter." Qwest also states that it had been providing service to this customer prior to the section becoming part of Accipiter's CC&N area.

In response to STF 1.6, Qwest states in part that it has a "100 pair cable which runs through the Qwest Extension Area on Olive Rd turning onto White Tanks Mountain Rd into the non contiguous territory in Section 18."

Staff would note that the area code for the Qwest Extension Area would change from 928 to 623 but this would have no effect on the scope of the local calling area for future customers as Accipiter's exchanges are part of the Phoenix local calling area.¹⁵ There would also be no impact on the one existing customer since the customer already has a Qwest assigned number in the 623 NPA. Further, it is Staff's understanding that Qwest Extension Area primarily consists of county land with only four parcels being owned by other private or public entities.

Staff recognizes that the Qwest Extension Area includes an additional one and three-quarters sections other than the section Qwest's customer resides within. This addition serves to "square off" Qwest's service area. However Staff believes this is a reasonable addition in that it should be less costly for Qwest to provide service to those sections than it would be for Accipiter. Staff recommends that the transfer of the Qwest Extension Area from Accipiter to Qwest be approved.

C. Rates and Charges

The Joint Application requests approval for Accipiter to charge those rates and charges in the Zona Extension Area that are set forth in the existing Accipiter tariffs on file with the Commission. The Joint Application also requests approval for Qwest to charge those rates and charges in the Qwest Extension Area that are set forth in the existing Qwest tariffs on file with the Commission.¹⁶

¹² Joint Application at page 4.

¹³ Joint Application at page 4.

¹⁴ Joint Application at page 4.

¹⁵ Since Accipiter exchanges in the 928 NPA are in a different rate center from Qwest in the 623 NPA, there is a restriction on number portability between the two service areas.

¹⁶ Joint Application at pages 1,2.

A comparison of basic service rates between the two companies is as follows:

	Accipiter	Qwest	
Residential	\$16.78	\$13.18	Qwest Extension Area
	\$16.78	\$14.68 ¹⁷	Zona Extension Area
Business	\$35.78	\$30.40	Qwest Extension Area
	\$35.78	\$31.90 ¹⁸	Zona Extension Area

Qwest's monthly recurring rates for basic service would be lower than Accipiter if the transfer of the Qwest Extension Area is approved. Qwest's tariff includes a Provisioning Agreement For Housing Developments ("PAHD") which may require payment by a developer for some of the cost to construct new facilities. However, at this time, there are no known developments for the Qwest Extension Area that would be impacted.

Since Accipiter makes use of United States Department of Agriculture Rural Development¹⁹ financing, it is precluded from charging construction or line extension charges. Qwest's tariff includes a PAHD which may require payment by a developer for some of the cost to construct new facilities. Although Accipiter's monthly recurring rates for basic service would be higher than Qwest if the transfer of the Zona Extension Area is approved, this is somewhat offset by the benefit received from having no construction or line extension charges with Accipiter as the service provider. It is Staff's understanding that Accipiter has informed the developer of the difference in basic service rates and also stated to the developer that when Accipiter's basic service is bundled with calling features its rates are generally lower than Qwest's comparable bundles.

The approved rates and charges for both Companies apply uniformly across the entirety of their respective service areas. The difference in basic service rates would only impact future customers as development occurs. The one existing customer located in the proposed Qwest Extension Area would not be impacted because this customer currently is charged Qwest rates. Therefore Staff recommends that the Commission approve the request of Accipiter and Qwest to charge those rates and charges that are set forth in the existing tariffs on file with the Commission for the Zona Extension Area and Qwest Extension Area respectively.

D. Federal Communications Commission ("FCC") Waiver of Study Area Boundary Freeze

The Joint Application requests an Order which approves the exchange of service area also state "that the Commission does not object to the grant of a waiver by the Federal Communications Commission ("FCC") of the Study Area boundary freeze that would allow Zona and Qwest to modify their respective Study Areas consistent with the changes authorized in the Order."²⁰

¹⁷ Includes Exchange Zone Increment charge of \$1.50 for Zone 2.

¹⁸ Id.

¹⁹ Also known as Rural Utilities Service ("RUS").

²⁰ Joint Application at page 2.

The FCC froze study area boundaries as of November 15, 1984 to prevent holding companies from setting up high cost exchanges within their existing territories as separate companies in order to maximize high cost support.²¹ The FCC also stated study area were not frozen to preclude the acquisition of high cost exchanges or expansion of service territories to high cost areas.

In general, in reviewing study area waiver petitions, the FCC considers whether: 1) the change in study area boundaries will adversely affect the universal service fund, 2) a state commission having regulatory authority over the transferred area has opposed the transfer and 3) the transfer is in the public interest.

Accipiter and Qwest each have only one study area within Arizona. There are no Qwest customers currently being served, nor any Qwest facilities, within the Zona Extension Area. Therefore there is no immediate impact upon the universal service fund by approval of the transfer of this area from Qwest to Accipiter. Similarly, there are no Accipiter customers currently being served, nor any Accipiter facilities, within the Qwest Extension Area. Therefore there is no immediate impact upon the universal service fund by approval of the transfer of this area from Accipiter to Qwest. Further the one Qwest customer located within the area would have a *de minimus* impact on Qwest's study area. In addition, Qwest does not receive high cost loop support for its rural service area due to the impact of averaging its costs statewide.

In response to STF 1.11, Accipiter stated that to the extent its "initial investment to serve the Zona Extension Area could increase its average investment per access line, Zona's Federal USF could increase. However, as the development begins to achieve density and thus decrease Zona's average investment per access line, Federal USF could decrease." Staff believes that any future change in the amount of funding received by Accipiter due to the transfer of service areas would be of *de minimus* impact to the High Cost Fund.

In general, federal universal service policy promotes the availability of communications services in an efficient, widespread manner and with adequate facilities at reasonable charges. The transfer of the two identified extension areas allows each area to be served by the provider that can most efficiently provide service. Accordingly, Staff recommends that any Order approving the exchange of service areas include an ordering clause which states that the Commission does not object to the grant of a waiver by the FCC of the Study Area boundary freeze that would allow Accipiter and Qwest to modify their respective Study Areas consistent the changes authorized by the Commission.

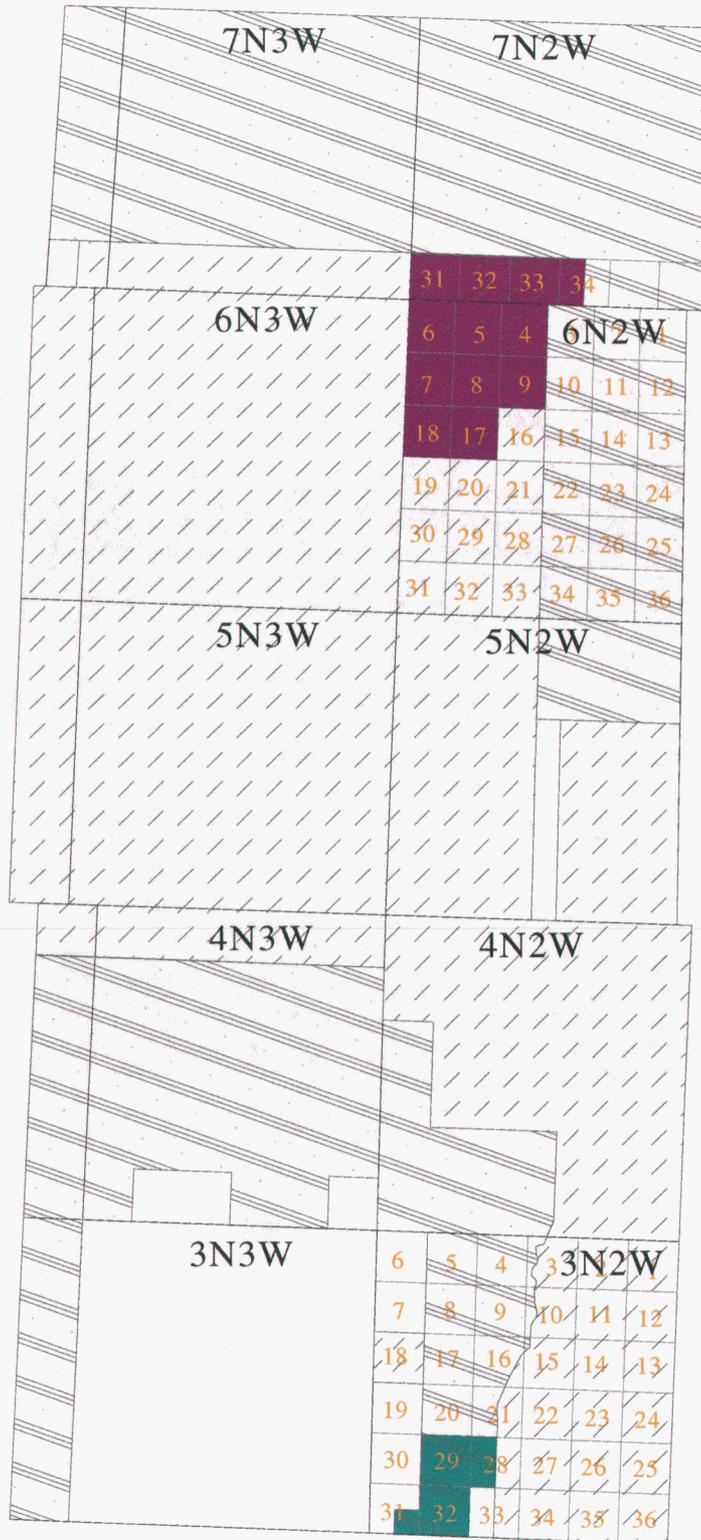
IV. Recommendations and Conclusion

Staff recommends that the Commission find that approval of the exchange of service areas identified in the Joint Application is in the public interest. Staff further recommends that:

²¹ See *In The Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Recommended Decision & Order, 57 RR 2d 267, 290 ¶ 65 (1984).

1. The Companies be required to update their respective service area maps on file with the Commission within sixty (60) days of a Decision granting the Joint Application,
2. The Companies be authorized to apply their respective tarriffed rates and charges to the service areas that are approved to be exchanged, and
3. An ordering clause be included which states that the Commission does not object to the grant of a waiver by the FCC of the Study Area boundary freeze that would allow Accipiter and Qwest to modify their respective Study Areas consistent with the changes authorized by the Commission.

ACCIPITER COMMUNICATIONS, INC.
 DOCKET NO. T-02847A-08-0164
 QWEST CORPORATON
 DOCKET NO. T-01051B-08-0164
 Attachment 1



 ACCIPITER (ZONA)
COMMUNICATIONS, INC.

 ZONA EXTENSION
DELETED FROM QWEST

 QWEST
COMMUNICATIONS, I

 QWEST EXTENSION
DELETED FROM ZON