

NEW APPLICATION



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FENNEMORE CRAIG

A PROFESSIONAL CORPORATION

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2002 SEP -9 P 3:33

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September 9, 2002

T-01051B-02-0680

T-03539A-02-0680

T-03658A-02-0680

BY HAND DELIVERY

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

SEP 09 2002

DOCKETED BY	<i>CAJ</i>
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Re: In the Matter of the Application of Qwest Corporation for Approval of the Confidential Billing Settlement Agreement as an Amendment to the Interconnection Agreement with Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc.

Dear Madam or Sir:

Pursuant to Section 252(e)(2) of the Telecommunications Act of 1996, Qwest Corporation ("Qwest") hereby submits the enclosed negotiated Confidential Billing Settlement Agreement ("Agreement") dated July 13, 2001, between Qwest Corporation ("Qwest") and Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc. ("Global") as an Amendment for filing with and approval by the Arizona Corporation Commission ("Commission"). The Commission approved the underlying Interconnection Agreement between Qwest and Global on February 27, 1998 in Docket No. T-01051B-97-0725, Decision No. 60695.

Qwest has previously submitted over 200 agreements and amendments with CLECs in Arizona for approval by the Commission under Section 252(e)(2). In addition to the filed agreements, Qwest also has implemented other contractual arrangements with CLECs that it does not believe fall within the filing requirements of Section 252.

Earlier this year questions were raised regarding Qwest's decisions in this area, most notably a complaint filed by the Minnesota Department of Commerce ("DOC") alleging, after a review of dozens of Qwest-CLEC contracts, that eleven should have been filed with the Minnesota PUC. Qwest promptly brought this matter to this Commission's attention starting in March 2002, including providing copies of our answer to the DOC complaint, and copies of those of the 11 identified agreements that also had applicability in Arizona. Qwest invited the Commission to review the agreements for itself. The Commission opened the 252(e) docket on

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April 9, 2002. Pursuant to a Procedural Order within that Docket, Qwest submitted 79 agreements to Commission Staff. Qwest also filed a petition with the FCC requesting a declaratory ruling as to the scope of the Section 252(a) filing requirement in this area.

Qwest has at all times operated in good faith in filing with the Commission the pertinent interconnection agreements and amendments, and is committed to full compliance with the Act. As a further demonstration of our good faith, after this issue arose Qwest modified its processes and standards for all new agreements with CLECs. Qwest advised the Commission of this policy by letter on May 10, 2002. Under this policy Qwest is broadly filing all contracts, agreements or letters of understanding between Qwest Corporation and CLECs that create obligations to meet the requirements of Section 251(b) or (c) on a going forward basis. Qwest believes that commitment goes well beyond the requirements of Section 252(a). For example, it reaches details of business-to-business carrier relations that Qwest does not think the Communications Act requires to be filed with state commissions for approval. However, we are committed to follow this standard until the FCC issues a decision on the appropriate line drawing in this area. (Unless requested by the Commission, Qwest has not been filing routine day-to-day paperwork, orders for specific services, or settlements of past disputes that do not otherwise meet the above definition.)

Older agreements provide a more complicated case. Qwest naturally has been concerned about its potential penalty liability with regard to second-guessing of its past filing decisions in an area where the standards have not been clearly defined. Nevertheless, Qwest is now taking a further step as a sign of its good faith. Specifically, Qwest has reviewed all of our currently effective agreements with CLECs in Arizona that were entered into prior to adoption of the new policy. This group includes those agreements that relate to Section 251(b) or (c) services on an on-going basis which have not been terminated or superseded by agreement, commission order, or otherwise. Qwest has applied its broad new review standard to all such agreements and provided them here.

Qwest is petitioning the Commission to approve the attached agreements such that, to the extent any active provisions of such agreements relate to Section 251 (b) or (c), they are formally available to other CLECs under Section 252(i). For the Commission's benefit, Qwest has marked, highlighted or bracketed those terms and provisions in the agreements which Qwest believes relate to Section 251(b) or (c) services, and have not been terminated or superseded by agreement, Commission order, or otherwise, and are thus subject to filing and approval under Section 252. We are not asking the Commission to decide whether any of these agreements, or specific provisions therein, in fact are required to be filed under Section 252 as a matter of law. The Commission need simply approve those provisions relating to Section 251(b) or (c) services under its Section 252(e) procedures, and Qwest will make the going forward provisions related to Section 251(b) or (c) available under Section 251(i). Thus, the Commission does not at this

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time need to reach a legal interpretation of Section 252(a), or decide when the 1996 Act makes a filing mandatory, and when it does not.

As noted above, Qwest has not been and is not filing routine day-to-day paperwork, settlements of past disputes, stipulations or agreements executed in connection with federal bankruptcy proceedings, or orders for specific services. Included in this last category are contract forms for services provided in approved interconnection agreements, such as signaling, call-related databases, and operator or directory services. The parties may execute a form contract memorializing the provision of such services offered and described in the interconnection agreement. Upon the Commission's request, Qwest can provide examples of routine paperwork, order documents, or form contracts for its review.

Qwest also has not filed contracts with CLECs arising out of bankruptcy proceedings, because such contracts relate to pre- and post-bankruptcy petition claims, adequate assurances agreements, avoidance of service interruptions and the like, and do not change the terms or conditions of the underlying interconnection agreement. In the event that a bankruptcy court finalizes an agreement that does change the terms of the existing interconnection agreement, that agreement will be filed with the state commissions under Section 252(e).^{1/} (We have not excluded agreements with bankrupt CLECs entered into before they filed for bankruptcy.)

Qwest realizes that this voluntary decision to submit the attached agreements does not bind the Commission with respect to the question of Qwest's past compliance. However, Qwest submits that it has acted in good faith, and that this Commission will conclude that penalties are not appropriate. In any event, Qwest actions here remove any argument with respect to Qwest's compliance with Section 252 now and going forward.

Qwest requests that the Commission approve the agreements as soon as reasonably practicable. Qwest reserves its rights to demonstrate that one or more of these agreements need not have been filed in the event of an enforcement action in this area. Meanwhile, however, Qwest will offer other CLECs any terms in effect for the benefit of the contracting CLEC pursuant to the policies and rules related to Section 251(i). (Provisions that settle past carrier-specific disputes, that do not relate to Section 251, or that are no longer in effect are not subject to Section 251(i) and this offering.)

As a further sign of good faith, Qwest will also be posting the agreements on the website it uses to provide notice to CLECs and announcing the immediate availability to other CLECs in Arizona of the interconnection-related terms and conditions. This will facilitate the ability of

^{1/} Qwest has an agreement with Arch Wireless in this category that was executed by the parties on July 26, 2002, but it has not yet been approved by the bankruptcy court. When approved by the court, this amendment to the Arch interconnection agreement will be filed under Section 252(e).

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CLECs to request terms and conditions, subject to the Commission's decision approving the agreements filed here.

Given the confidentiality provisions contained in some of these agreements and the fact that the CLECs involved may deem the information contained therein confidential, Qwest has redacted those terms, such as confidential settlement amounts relating to settlement of historical disputes between Qwest and the particular CLEC, confidential billing and bank account numbers and facility locations, which relate solely to the specific CLEC and do not relate to Section 251(b) or (c) services.

Enclosed is a service list for this docket. Please contact me at (602) 916-5345 if you have any questions concerning the enclosed. Thank you for your assistance in this matter.

Sincerely,

FENNEMORE CRAIG

Darcy Renfro

Enclosures

cc: James Dole, Senior Vice President, Network Cost and Carrier Management
Ernest G. Johnson, Director, ACC Utilities Division
Chris Kempley, Chief Counsel, ACC Hearing Division

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SERVICE LIST FOR: Qwest Communications
Docket No. T-01051B-97-0725

Timothy Berg
Fennemore Craig
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012

James Dole
Senior Vice President
Global Crossing Local Services, Inc.
Global Crossing Telemangement, Inc.
180 South Clinton Avenue
Rochester, NY 14646

Mr. Christopher C. Kempley
Chief Counsel
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Mr. Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

SUBJECT TO RULE OF EVIDENCE 408

CONFIDENTIAL BILLING SETTLEMENT AGREEMENT

This Confidential Billing Settlement Agreement ("Agreement"), dated July 13, 2001, is between Qwest Corporation ("Qwest") and Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc., and all of its agents, affiliates, employees, principals, officers, directors, successors, assigns, parents, and subsidiaries (hereafter "Global Crossing") (together the "Parties"). The Parties hereby enter into this Confidential Billing Settlement Agreement with regard to the following:

RECITALS

Whereas, Qwest is an incumbent local exchange provider operating in the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

Whereas, Global Crossing is a competitive local exchange provider and an interexchange carrier that operates in the various states listed above.

Whereas, the Parties have had various disputes regarding the pricing for private line facilities, including the provisioning and pricing of private line on an EEL basis.

Whereas the Parties entered into a Settlement Agreement and Release dated September 18, 2000 as part of the Qwest/U S WEST merger, which covered the following areas: (1) billing for the unbundled network element platform ("UNE-P") when a service (including Centrex and Centrex-like service) is converted from a resold or

other service; (2) installation intervals for subsequent UNE-P requests placed through Qwest's intermediate mediated access for POTS (plain old telephone service); and (3) installation intervals for subsequent manual UNE-P requests for designed circuits.

Whereas disputes have arisen between the Parties with regard to the September 18, 2000, Settlement Agreement and Release, and its meaning and financial impact to the Parties.

Now therefore, in an attempt to finally resolve the issues in dispute and to avoid delay and costly litigation, and for valuable consideration, the Parties voluntarily enter into this Confidential Billing Settlement Agreement to resolve the existing disputes, claims and controversies between the Parties, as of the date of this Agreement that relate to the matters addressed herein and release all existing claims related to these matters.

CONFIDENTIAL BILLING SETTLEMENT AGREEMENT

1. Qwest will make a one-time [REDACTED] payment to Global Crossing in exchange for a release and satisfaction of the September 18, 2000, Settlement Agreement and other billing and provisioning disputes which exist between the Parties. Global Crossing will provide to Qwest wiring instructions within three business days of the signing of this Confidential Billing Settlement Agreement, and Qwest will transmit by wire transfer to Global Crossing the total payment of [REDACTED] within five business days of receiving the wiring instructions.

2. For those lines or private lines that have not been converted from resale or other lines to UNE-P or EEL, Qwest will bill Global Crossing at the appropriate resale or other rate, until the date that each such line has been converted to UNE-P or EEL (the "Conversion Date"). With respect to each such line (including Centrex and Centrex-like lines) that is converted, the Effective Billing Date ("EBD") shall be the Conversion Date. Upon the Conversion Date, Qwest shall bill Global Crossing, with respect to each such line that has been converted, the applicable UNE-P or EEL rate and shall cease billing interstate and intrastate access and related charges (including primary interexchange carrier charge) with respect to each such line, but shall in no way be precluded from billing the appropriate charge to change the primary interexchange carrier on any such line. Until such resale or other line has been converted to UNE-P or EEL, Qwest will bill Global Crossing applicable interstate and intrastate access, and associated charges, with respect to each such line. In order for Global Crossing to receive a UNE-P or EEL rate, it must submit an accurate and complete order, and follow Qwest's processes to convert services to UNE-P or EEL. Also, Global Crossing must meet applicable restrictions, as they may exist or change from time to time, on UNE conversion. Qwest shall process such orders in a timely and accurate manner in accordance with standard provisioning intervals as may be specified in applicable tariffs, interconnection agreements or state commission regulations or rulings.

3. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Global Crossing and Qwest do hereby release and forever discharge the other and the other's associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of

affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies and attorneys, from any and all manner of action or actions, causes or causes of action, in law, under statute, or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, liability, claims, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, fixed or contingent, known or unknown, past and present asserted or that could have been asserted or could be asserted in any way relating to or arising out of the matters addressed herein as of the date of the execution of this Confidential Billing Settlement Agreement by both Parties.

4. The terms and conditions contained in this Confidential Billing Settlement Agreement shall inure to the benefit of, and be binding upon, the respective successors, affiliates and assigns of the Parties.

5. Each Party hereby covenants and warrants that it has not assigned or transferred to any person any claim, or portion of any claim which is released or discharged by this Confidential Billing Settlement Agreement.

6. The Parties expressly agree that they will keep the substance of the negotiations and or conditions of the settlement and the terms or substance of this Confidential Billing Settlement Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of negotiations and/or conditions of the settlement and the terms or substance of this Agreement to any person, judicial or administrative agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law. It is expressly agreed that

this confidentiality provision is an essential element of this Confidential Billing Settlement Agreement. The Parties agree that this Confidential Billing Settlement Agreement and negotiations, and all matters related to these two matters, shall be subject to the Rule 408 of the Rules of Evidence, at the federal and state level.

7. In the event either Party has a legal obligation which requires disclosure of the terms and conditions of this Confidential Billing Settlement Agreement, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope and source of such obligation so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided for in this Agreement.

8. This Confidential Billing Settlement Agreement constitutes the entire agreement between the Parties and can only be changed in a writing or writings executed by both of the Parties. Each of the Parties forever waives all right to assert that this Confidential Billing Settlement Agreement was a result of a mistake in law or in fact.

9. This Confidential Billing Settlement Agreement shall be interpreted and construed in accordance with the laws of the State of Minnesota, and shall not be interpreted in favor or against any Party to this Agreement except as expressly provided herein.

10. The Parties have entered into this Confidential Billing Settlement Agreement after conferring with legal counsel.

11. If any provision of this Confidential Billing Settlement Agreement should be declared to be unenforceable by any administrative agency or court of law, the remainder of the Confidential Billing Settlement Agreement shall remain in full force and

effect, and shall be binding upon the Parties hereto as if the invalidated provision were not part of this Confidential Billing Settlement Agreement.

12. Any claim, controversy or dispute between the Parties in connection with this Confidential Billing Settlement Agreement shall be resolved by private and confidential arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement, but shall not have the authority to award punitive damages. The arbitrator's decision shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator.

13. The Parties acknowledge and agree that they have a legitimate billing dispute about the issues described in this Confidential Billing Settlement Agreement and that the resolution reached in this Agreement represents a compromise of the Parties' positions. Therefore, the Parties agree that resolution of the issues contained in this Agreement cannot be used against the other Party.

14. This Confidential Billing Settlement Agreement may be executed in counterparts and by facsimile.

From: Quinn Cron (480) 307-4933 To: Jim Schegus

DATE: 7/18/2001 TIME: 1:10:01 PM

JUL 18. 2001 1:10PM GLOBAL CROSSING

NO. 961 P. 2

IN WITNESS THEREOF, the Parties have caused this Confidential Billing Agreement to be executed as of this 17th day of July 2001.

Global Crossing Local Services, Inc.
Global Crossing Telemanagement, Inc.

Qwest Corporation

By: [Signature]

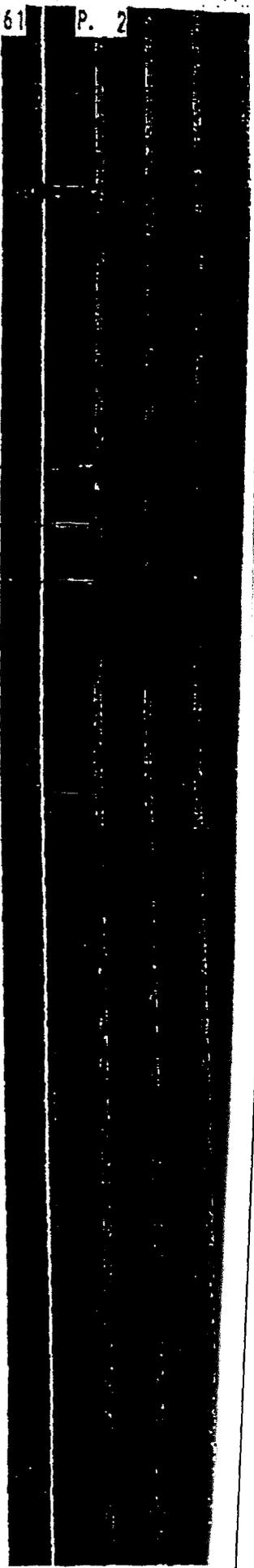
By: _____

Title: Sr. VP NETWORK COST & SERVICE MGMT

Title: _____

Date: 7-18-01

Date: _____



IN WITNESS THEREOF, the Parties have caused this Confidential Billing Settlement Agreement to be executed as of this 13th day of July 2001.

Global Crossing Local Services, Inc.
Global Crossing Telemanagement, Inc.

Qwest Corporation

By: _____

By: Audrey McHenry

Title: _____

Title: SVP - Wholesale Markets

Date: _____

Date: 7-20-01