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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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WILLIAM A. MUNDELL  
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IN THE MATTER OF QWEST  
CORPORATION'S COMPLIANCE WITH  
SECTION 252(e) OF THE  
TELECOMMUNICATIONS ACT OF 1996.

Docket No. RT-00000F-02-0271

**RUCO'S COMMENTS**

**I. Introduction**

Attached to this pleading is RUCO's Report of Investigation ("Report") of the Unfiled Agreements of Qwest Communications, Inc. ("Qwest"), Eschelon Telecom, Inc. ("Eschelon"), and McLeodUSA Telecommunications Services, Inc. ("McLeodUSA").

RUCO maintains, based upon the evidence reviewed, to date, that reasonable grounds exist to believe the following:

- Qwest, McLeodUSA, and Eschelon knowingly violated federal and state laws that prohibit discrimination among telecommunications competitors;
- The violations were pursuant to a scheme or artifice to deceive this Commission and the public.
- One object of the scheme was for Qwest to discriminate in favor of McLeodUSA and Eschelon and against other competitors and against competition in general.
- Another object of the scheme was to pay kickbacks for McLeodUSA's and Eschelon's silence as regulators considered whether Qwest was giving nondiscriminatory access to competitors and therefore entitled to enter the long distance market.

1 An Appendix of supporting evidence accompanies the Report. The Report and  
2 Appendix contain information that has been identified as "Confidential Trade Secret" and are  
3 therefore filed under seal unless and until the information is made public by order of this  
4 Commission pursuant to A.R.S. § 40-204.

5 **II. Comments on Staff's Supplemental Report and Recommendation**

6 RUCO agrees that the 1996 Telecommunications Act protects competition and  
7 competitors from discriminatory behavior. The Act prohibits discrimination concerning  
8 interconnection, regardless of legal formalities. Let one thing be clear: the partnerships  
9 between Qwest and McLeodUSA and between Qwest and Eschelon discriminated not only to  
10 favor the partners and harm competitors but also to attack competition in general. This is why  
11 the Commission must thoroughly investigate the nature and seriousness of the discrimination  
12 perpetrated by Qwest, McLeodUSA, and Eschelon.

13 The attack on competition will be thoroughly understood when all the facts are known.  
14 Look at everything the parties did, and everything they put in place. For example, Qwest paid  
15 kickbacks to McLeodUSA and Eschelon, ostensibly to buy their silence on 271 long distance  
16 matters. The kickbacks also made Qwest's wholesale telecommunications products less  
17 expensive for McLeodUSA and Eschelon than for other competitors. The kickbacks  
18 strengthened Qwest's allies and weakened their competitors.

19 Most of the scheme was contained and concealed from public view in oral agreements,  
20 side agreements, letter agreements, "billing settlements," and secret accounting gimmickry.  
21 Yet a pattern emerges from the artifice and deceit. The public documents set a high cost for  
22 competitors, who buy certain Qwest products. The bottom line looks considerably less  
23 expensive in the secret deals for McLeodUSA and Eschelon. If a transaction of this magnitude  
24 looks expensive, then competition looks expensive. The result: an attack on competition.

1 RUCO believes this matter should be kept under one docket until the Commission  
2 ascertains all the facts. This will permit the Commission to develop guidelines and promulgate  
3 rules that will keep this from happening again. Putting the matter into separate dockets will  
4 miss the big picture. The procedure should not obscure the facts.

5 **III. Recommendations**

6 Based upon the foregoing, RUCO recommends the scope of the hearing be  
7 comprehensive, to permit a full investigation of the business-to-business conduct among  
8 Qwest, McLeodUSA, and Eschelon. RUCO believes the section 271 and section 252 dockets  
9 should be consolidated for purpose of the hearing, so that the hearing can have a broad scope  
10 and all appropriate remedies can be considered.

11 RUCO recommends that further investigation by parties be permitted, and that the  
12 Commission direct the parties not to destroy any documents related to the business-to-  
13 business conduct between Qwest and McLeodUSA and Qwest and Eschelon, pending  
14 resolution of this matter (RUCO understands that at least one party to such agreements has a  
15 relatively brief document retention program).

16 RUCO believes that depositions are necessary, including those of out-of-state  
17 witnesses. The required investigations would take approximately 90 days, assuming  
18 cooperation of deponents.

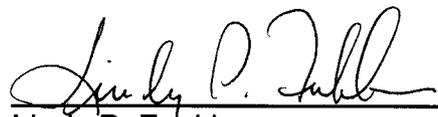
19 At the conclusion of its investigation, RUCO, or another party, can file a complaint or  
20 Report of Investigation. Further hearing procedures can be determined at that time.

21 After the hearing, the Commission can adopt findings of facts and conclusions of law  
22 based upon the evidence, impose remedies as appropriate, direct remedial action into new or  
23 existing dockets, including rulemaking dockets, and refer matters to other agencies, including  
24 prosecutorial agencies, if appropriate.

1 **IV. Conclusion**

2 RUCO firmly believes the Commission must comprehensively investigate what Qwest,  
3 McLeodUSA, and Echelon have done. It is not important why they concealed material facts.  
4 The important issue is how concealment benefited them. Follow the money to find the answer.

5 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of August, 2002.

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