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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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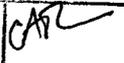
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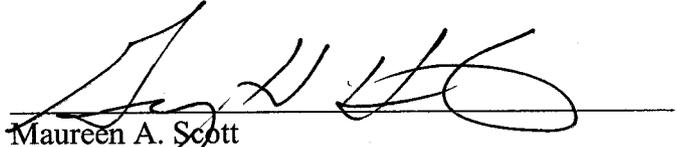
IN THE MATTER OF QWEST CORPORATION'S  
COMPLIANCE WITH SECTION 252(e) OF THE  
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. RT-00000F-02-0271

NOTICE OF FILING  
DIRECT TESTIMONY

The Staff of the Arizona Corporation Commission ("Staff") hereby files the Direct Testimony of Marta Kalleberg of the Utilities Division, in the above-referenced matter.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of February, 2003.



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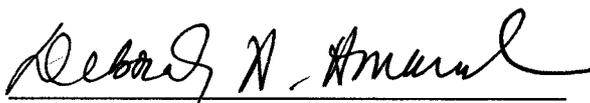
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**DIRECT  
TESTIMONY  
OF**

**MARTA G. KALLEBERG**

**IN THE MATTER OF QWEST CORPORATION'S  
COMPLIANCE WITH SECTION 252(e) OF THE  
TELECOMMUNICATIONS ACT OF 1996**

**DOCKET NO. RT-00000F-02-0271**

**FEBRUARY 21, 2003**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

MARC SPITZER – Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
MIKE GLEASON  
JEFF HATCH-MILLER

IN THE MATTER OF QWEST CORPORATION'S)  
COMPLIANCE WITH SECTION 252(e) OF THE )  
TELECOMMUNICATIONS ACT OF 1996 \_\_\_\_\_)

DOCKET NO. RT-00000F-02-0271

DIRECT

TESTIMONY

OF

MARTA KALLEBERG

PUBLIC UTILITIES ANALYST

TELECOMMUNICATIONS AND ENERGY SECTION

UTILITIES DIVISION

FEBRUARY 21, 2003

PUBLIC VERSION

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**EXECUTIVE SUMMARY**  
**QWEST CORPORATION'S COMPLIANCE WITH SECTION 252(E) OF**  
**TELECOMMUNICATIONS ACT OF 1996**  
**DOCKET NO. RT-00000F-02-0271**

In March 2002, the Arizona Corporation Commission ("Commission") commenced an informal investigation to determine whether Qwest Corporation ("Qwest") was in compliance with Section 252(e) of the Telecommunications Act of 1996 ("1996 Act"), which requires that any interconnection agreements entered into between Qwest and a competitive local exchange carrier ("CLEC") be filed with the Commission for approval. On April 8, 2002, after additional discovery and comments from parties, Staff filed a recommendation with the Hearing Division that the Commission commence a formal investigation into Qwest's compliance with Section 252(e) of the 1996 Act.

Qwest and other parties filed approximately 100 agreements which had not previously been filed with the Commission for approval under Section 252(e). Staff reviewed these agreements under the requirements of the 1996 Act in Sections 251 and 252 and the Arizona Administrative Code ("A.A.C.") as it pertains to interconnection agreements. Staff also reviewed these agreements under a recent Federal Communications Commission ("FCC") Order which clarified the filing requirements of the 1996 Act contained in Sections 251 and 252. Staff determined that 28 of these agreements were interconnection agreements and were required to be filed under Section 252(e). Staff determined that of these 28 agreements, 16 agreements that Qwest had entered into with both Eschelon and McLeod were intentionally and willfully not filed for Commission approval. Also, several unfiled agreements contained non-participation clauses. The decision to add non-participation clauses to agreements that Qwest executed with CLECs was an intentional and willful decision by Qwest. Staff has determined that for the Eschelon and McLeod agreements and the non-participation clauses, Qwest's actions were intentional, willful, and contrary to Commission rules and processes and appear to be in violation of federal law.

Based upon its findings, Staff recommends that Qwest be assessed a series of monetary and non-monetary penalties to deter Qwest from repeating the same (or similar) violations investigated in this docket in the future. The penalties are intended to help ameliorate the anti-competitive outcome of the unfiled agreements and to remedy the adverse impact on the emergence of local competition in Arizona. First, Staff recommends a monetary penalty of \$15 million based on the fact that Qwest's actions were intentional, willful, and contrary to Commission rules and processes with respect to the following: 1) the agreements that Qwest entered into with Eschelon and McLeod, and 2) the non-participation clauses Qwest entered into with carriers. Staff recommends an additional monetary penalty of \$47,000 for other unfiled agreements it entered into with other carriers, but for which Staff could not find that Qwest's actions were intentional and willful. Second, Staff recommends that Qwest either be required to file all of the unfiled agreements with the Commission for opt-in by other carriers or that Qwest be required to make the benefits of the unfiled agreements available to CLECs who were not parties to the initial agreements. One benefit that Staff is recommending be made available to other carriers is that Qwest provide each CLEC (except Eschelon and McLeod) with a cash payment totaling 10 percent of its purchases of Section 251(b) or (c) services and 10 percent of its purchases of intrastate access from Qwest in Arizona from January 1, 2001, through June 30, 2002. Staff also recommends that Qwest provide each CLEC (except Eschelon and McLeod) with a credit totaling 10 percent of its purchases of Section 251(b) or (c) services and 10 percent of its purchases of intrastate access from Qwest in Arizona for eighteen months following the date of a

decision in this matter. Third, Staff recommends that Qwest implement changes to its Performance Assurance Plan ("PAP"), which would be effective following Section 271 approval. Certain performance standards in the PAP would be modified to benefit CLECs and their retail customers who rely on Qwest for products and services. Fourth, Staff recommends that Qwest hire an independent monitor to ensure and report upon Qwest's ongoing compliance with Section 252(e) for two years. This monitor will file quarterly reports with the Commission detailing Qwest's compliance with Section 252(e). Fifth, Staff recommends that Qwest draft a Code of Conduct for comment by all parties to govern its relationships with CLECs in the future and which would prohibit the same (or similar) anti-competitive actions revealed in this investigation. The Commission will review the Code of Conduct, and make modifications to it based upon the comments submitted, prior to its approval. Staff believes that Qwest's behavior and actions, with respect to the Eschelon and McLeod agreements and the non-participation clauses, intentionally deceived the Commission, were designed to circumvent the regulatory process, and were so contrary to the public interest that the Commission is compelled to assess these penalties upon Qwest.

1 INTRODUCTION

2 **Q. Please state your name and business address for the record.**

3 A. My name is Marta Kalleberg. I am employed at the Arizona Corporation Commission,  
4 1200 West Washington Street, Phoenix, AZ 85007.

5  
6 **Q. What is your position at the Commission?**

7 A. I am a Public Utilities Analyst in the Telecommunications and Energy Section of the  
8 Commission's Utilities Division.

9  
10 **Q. Please describe your education and professional background.**

11 A. I received a BA degree in economics from Mary Baldwin College in 1996. I received an  
12 MS degree in economics from Purdue University in 1998. I was hired by the Commission  
13 in April of 2000. In this position, I have been involved in the Section 271 docket,  
14 specifically the Performance Assurance Plan and long-term PID administration. I am  
15 responsible for all issues related to the Arizona Universal Service Fund and Extended  
16 Area of Service, including developing rules for both of these issues. I am also responsible  
17 for a variety of other issues such as reviewing competitive local exchange carrier  
18 ("CLEC") tariff filings and transfers of control.

19  
20 **Q. What is the purpose of your testimony?**

21 A. The purpose of my testimony is to explain in detail Staff's opinion and recommendations  
22 concerning Qwest Corporation's ("Qwest's") noncompliance with Section 252(e) of the  
23 Telecommunications Act of 1996 ("1996 Act"). Section 252(e) requires that any  
24 interconnection agreements adopted by negotiation or arbitration shall be submitted for  
25 approval to the relevant state commission. Section 252(e) provides that state commissions  
26 can only reject such agreements if they discriminate against another telecommunications

1 carrier not a party to the agreement; or the implementation of the agreement or portion  
2 thereof is not consistent with the public interest, convenience, and necessity. The public  
3 filing requirements of Section 252(e) ensure that incumbent telecommunications providers  
4 do not discriminate against or amongst competitive providers.  
5

6 In addition to a determination regarding Section 252(e) of the 1996 Act, this testimony  
7 will show that Qwest failed to comply with several provisions of the Arizona  
8 Administrative Code ("A.A.C."). Specifically, Qwest failed to comply with the following:  
9 A.A.C. R14-2-1112 which states that incumbent local exchange carriers ("ILECs") must  
10 provide non-discriminatory interconnection arrangements; A.A.C. R14-2-1307 which  
11 states that ILECs shall make essential facilities and services, such as unbundled network  
12 elements ("UNEs"), available to competitors pursuant to negotiated agreements that must  
13 be filed with the Commission; A.A.C. R14-2-1308 which states that ILECs shall provide  
14 interim local number portability to competitors pursuant to negotiated agreements that  
15 must be filed with the Commission; A.A.C. R14-2-1506 which states that interconnection  
16 agreements must be filed for Commission approval under Section 252(e) within 30  
17 calendar days of the execution date of an agreement; and A.A.C. R14-2-1508 which states  
18 that amendments to interconnection agreements must be filed for Commission approval.

1 **Q. Can you explain the general outline of Staff's testimony?**

2 **A.** Staff's testimony focuses on the issues identified in the November 7, 2002, Procedural  
3 Order:

- 4 • Filing standard for agreements  
5 • Agreements that should have been filed  
6 • When agreements should be filed  
7 • Why Qwest did not file agreements  
8 • Whether Qwest knew or should have known of the appropriate filing standard  
9 • Whether Qwest's conduct violated any other law, Commission Order, or rule  
10 • Penalties

11

12 Before covering these issues, Staff will provide background information on this docket.

13

14 **BACKGROUND**

15 **Q. What is the history of this docket?**

16 **A.** On February 14, 2002, the Minnesota Department of Commerce filed a Complaint with  
17 the Minnesota Public Utilities Commission ("MPUC") against Qwest alleging that Qwest  
18 had entered into interconnection agreements, or amendments to interconnection  
19 agreements, but had not filed those agreements with the MPUC for approval as required  
20 by Section 252(e) of the 1996 Act. Qwest filed a response to the Complaint alleging, in  
21 part, that the agreements were not "interconnection agreements", and therefore, Qwest had  
22 no obligation under Section 252(e) of the 1996 Act to file the agreements with the MPUC  
23 for approval.

24

25 Upon learning of the Minnesota complaint, several other state commissions in the Qwest  
26 region, including the Arizona Corporation Commission ("Commission"), commenced

1 investigations of their own to determine whether any interconnection agreements had been  
2 entered into between Qwest and a CLEC that had not been filed with the state commission  
3 for approval. The Commission's Utilities Division Director sent a letter to Qwest's Vice-  
4 President for Arizona and Regional Vice-President, requesting that Qwest file any  
5 agreements between Qwest and Arizona CLECs which had not been filed with the  
6 Commission for review and approval. Staff later made a similar request of all CLECs  
7 certificated to operate in Arizona.

8  
9 On March 11, 2002, Qwest responded in a letter to the Chairman of the Commission that  
10 it believed it had complied with Section 252(e) of the 1996 Act and that it had exercised  
11 good faith in deciding when a particular contract arrangement with a CLEC requires PUC  
12 filing and prior approval, and when it does not. Qwest also stated that it believed that the  
13 judgments it made in this area complied with a fair and proper reading of the 1996 Act.  
14 Qwest claimed that the unfiled agreements fell into one of the following four categories:  
15 1) agreements that contain business-to-business administrative procedures at a granular  
16 level, 2) agreements settling historical disputes, 3) agreements on matters falling outside  
17 the scope of Sections 251 and 252, and 4) agreements implementing Commission orders.  
18 Along with its letter, Qwest included its response to the Minnesota Complaint denying the  
19 allegations and copies of the agreements identified by the Minnesota Department of  
20 Commerce that involved CLECs operating in Arizona.

21  
22 In a subsequent letter dated March 15, 2002, to the Commission's Utilities Division  
23 Director, Qwest submitted a list and copies of agreements which it did not file with the  
24 Commission. Once it received signed Protective Agreements, Qwest issued another letter  
25 dated March 19, 2002. This letter included a more comprehensive list and copies of

1 confidential agreements which Qwest did not file with the Commission. Qwest requested  
2 confidential treatment of the agreements.

3  
4 AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively  
5 "AT&T") filed a Motion requesting that the Commission reopen the record in the Section  
6 271 proceeding now pending before the Commission to determine Qwest's compliance  
7 with key provisions of Section 252 of the 1996 Act, a necessary prerequisite to Section  
8 271 approval by the Federal Communications Commission ("FCC").

9  
10 On April 8, 2002, Staff opened this docket in order for the Commission to commence a  
11 separate investigation into Qwest's compliance with Section 252(e) of the 1996 Act, with  
12 parties given an opportunity to use any findings in this proceeding in the 271 proceeding  
13 to the extent applicable. Staff filed a Request for a Procedural Order to establish a  
14 schedule in this new docket on April 9, 2002. On April 18, 2002, the Hearing Division  
15 denied AT&T's Motion to Reopen the Section 271 proceeding to consider the various  
16 agreements and by separate Procedural Order commenced a separate investigation into  
17 this issue.

18  
19 On May 7, 2002, the Commission set a procedural schedule and because of the  
20 interrelationship of the Commission's deliberations under Section 271 of the 1996 Act, all  
21 intervenors in the Section 271 proceeding were deemed to be intervenors in this docket.  
22 Pursuant to the May 7, 2002, Procedural Order, interested parties, the Staff, and Qwest  
23 negotiated the provisions of a Protective Order which was approved by the Hearing  
24 Division on May 8, 2002. Thereafter, on May 10, 2002, Qwest filed a Notice of  
25 Production of Documents through which it formally submitted into the record all  
26 agreements with other carriers in Arizona which had not been submitted to the

1 Commission for approval under Section 252(e) of the 1996 Act, and which arguably could  
2 fall within its provisions. On May 13, 2002, Qwest also filed extensive comments on the  
3 filing obligations of telecommunications carriers under Section 252 of the 1996 Act.  
4 AT&T and Time Warner Telecom of Arizona ("Time Warner") filed responsive  
5 comments on May 28, 2002, and May 24, 2002, respectively. In addition, responsive  
6 comments were filed by the Residential Utilities Consumer Office ("RUCO") on May 24,  
7 2002. Qwest filed Reply Comments on June 1, 2002.

8  
9 On May 23, 2002, Qwest also filed with the FCC a Petition for Declaratory Ruling on the  
10 Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual  
11 Arrangements Under Section 252(A)(1).

12  
13 Staff issued its first Report on June 7, 2002. This Report contained a list of 25 agreements  
14 which Staff recommended be filed for Commission approval. Staff issued a Supplemental  
15 Report on August 14, 2002. Exhibit F of the Supplemental Report contained a list of 90  
16 agreements which were produced by Qwest or submitted by other parties in this docket.<sup>1</sup>  
17 Exhibit F included most, but not all, agreements that were submitted in this docket. Four  
18 agreements were provided by CLECs in data requests to Staff and were inadvertently not  
19 included in Exhibit F. One agreement with XO was provided by Qwest, but was  
20 inadvertently not included in Exhibit F. (Please see attachment Exhibit S-1 for a list of  
21 these five agreements.) Exhibit G of the Supplemental Report contained two categories of  
22 agreements: Category 1 and Category 2. Category 1 contained agreements which Staff  
23 believed should be filed for approval under Section 252(e). A list of 28 Category 1  
24 agreements appeared in Exhibit G. Category 2 contained agreements which had non-  
25 participation or non-opposition clauses (here and after referred to as non-participation

---

<sup>1</sup> The number 17 was skipped in Staff's list of 91 agreements, so the true number of agreements in Exhibit F is 90.

1 clauses), but which Staff was not recommending should be filed. A list of 9 Category 2  
2 agreements appeared in Exhibit G.

3  
4 **FILING STANDARD**

5 **Q. Please discuss the Federal Communications Commission's Order on the appropriate**  
6 **standard for the filing of interconnection agreements.**

7 **A.** On October 4, 2002, the FCC issued an Order that outlined the appropriate standard for  
8 filing interconnection agreements. (Please see attachment Exhibit S-2.) The FCC states  
9 that "an agreement that creates an *ongoing* obligation pertaining to resale, number  
10 portability, dialing parity, access to rights-of-way, reciprocal compensation,  
11 interconnection, unbundled network elements, or collocation is an interconnection  
12 agreement that must be filed pursuant to section 252(a)(1)" (emphasis in the original).  
13 These specific items are expressly mentioned as duties of local exchange carriers in the  
14 1996 Act under Section 251. The Act also mentions that ILECs have the obligation to  
15 negotiate agreements to fulfill these specific duties. The FCC disagrees with Qwest that  
16 only agreements that contain charges and service descriptions must be filed. (Please see ¶  
17 8 of attachment Exhibit S-2.) The FCC also disagrees with other parties that believe all  
18 agreements must be filed. (Please see Footnote 26 of attachment Exhibit S-2.)

19  
20 Qwest argued that agreements setting forth dispute resolution or escalation procedures do  
21 not need to be filed. The FCC disagreed. If these procedures are not generally available  
22 to other carriers through the ILEC's website, for instance, then agreements setting forth  
23 these provisions are considered to be interconnection agreements. However, the FCC  
24 does not state that agreements containing these provisions that are posted on the ILEC's  
25 website are exempt from the filing obligation. The FCC emphasizes that these provisions

1 must be offered in a nondiscriminatory manner. The method for doing this is through the  
2 252(e) filing obligation.

3  
4 Settlement agreements that relate to Section 251(b) or (c) services and are forward looking  
5 need to be filed. (Please see ¶ 12 of attachment Exhibit S-2.) The FCC agreed with  
6 Qwest that service order or contract forms that are used to request service do not need to  
7 be filed. (Please see ¶ 13 of attachment Exhibit S-2.) The FCC states that this Order does  
8 not preclude state enforcement actions related to agreements that are no longer in effect.  
9 (Please see ¶ 10 and Footnote 29 of attachment Exhibit S-2.) The FCC ends by saying  
10 that it is the duty of state commissions to implement this standard.

11  
12 **Q. Is the filing standard articulated by the FCC in its Order consistent with the filing**  
13 **standard articulated by Staff in this docket?**

14 **A.** Yes. Staff filed its first Report on June 7, 2002. Staff stated that Qwest should file  
15 agreements that pertain to interconnection, services, or network elements even if these are  
16 contractual agreements, settlement agreements, or contractual amendments.

17  
18 Staff filed a Supplemental Report on August 14, 2002. Staff stated that the term  
19 interconnection agreement mentioned in 252(e) must be defined broadly to include “any  
20 contractual agreement or amendment which relates to or affects interconnection,  
21 wholesale services or network elements.” (Please see page 6 of the Supplemental Staff  
22 Report.)

23  
24 Both Reports are consistent with the FCC’s Order. Staff and the FCC relied directly on  
25 the language in Sections 251 and 252 of the 1996 Act as it relates to interconnection in  
26 order to provide additional clarification on the appropriate filing standard. The FCC’s

1 Order dated October 4, 2002, did not create new law regarding the filing obligations of  
2 ILECs with respect to interconnection agreements. The FCC's Order simply clarified  
3 existing law.

4  
5 **Q. Please compare the filing standard advocated by Qwest in its request for a**  
6 **Declaratory Ruling by the FCC to the definition of an interconnection agreement**  
7 **contained in Qwest's Statement of Generally Acceptable Terms ("SGAT").**

8 **A.** Qwest advocated in its request for a Declaratory Ruling by the FCC that only agreements  
9 that contain charges and service descriptions are interconnection agreements which must  
10 be filed for state commission approval. (Please see ¶ 8 of attachment Exhibit S-2.)  
11 However, Qwest's SGAT contains a more general description of an interconnection  
12 agreement. Section 4.92 of Qwest's 13<sup>th</sup> Revised SGAT dated June 28, 2002, states:

13  
14 "Interconnection Agreement" or "Agreement" is an agreement entered into  
15 between Qwest and CLEC for Interconnection, Unbundled Network  
16 Elements or other services as a result of negotiations, adoption and/or  
17 arbitration or a combination thereof pursuant to Section 252 of the Act."  
18

19 If Qwest truly did interpret the filing standard more narrowly, it is likely that Qwest would  
20 have made that clear in its SGAT.

1 **Q. Will Staff rely on the filing standard articulated by the FCC in its Order in its**  
2 **investigation in this docket?**

3 **A.** Yes. For purposes of this docket, the definition of an interconnection agreement is as  
4 follows:

5 An interconnection agreement is any agreement, including settlement  
6 agreements, that currently creates, or did create at one time, an *ongoing*  
7 obligation pertaining to resale, number portability, dialing parity, access to  
8 rights-of-way, reciprocal compensation, interconnection, unbundled  
9 network elements, or collocation, which are services under Section 251(b)  
10 and (c).

11  
12 **Q. Does Staff recommend that this filing standard be used as the standard for all future**  
13 **filings of interconnection agreements with the Commission?**

14 **A.** Yes. For purposes of all future filings with the Commission, the definition of an  
15 interconnection agreement given above should be used by parties to determine whether an  
16 agreement needs to be filed for Commission approval. Staff recommends that the Arizona  
17 Administrative Code which relates to interconnection be revised to include the above  
18 definition of an interconnection agreement. Specifically, the A.A.C. R14-2-1100, 1300,  
19 and 1500 series should be modified to include this definition.

20  
21 **AGREEMENTS THAT SHOULD HAVE BEEN FILED: SUMMARY**

22 **Q. Based upon the filing standard utilized by Staff in this docket, which unfiled**  
23 **agreements qualify as interconnection agreements and should have been filed?**

24 **A.** Table 1 below lists 28 unfiled agreements which qualify as interconnection agreements  
25 and should have been filed for Commission approval. These agreements are first  
26 organized by the number of agreements with each company (with companies with a larger

1 number of agreements being first) and then by the date of the agreement. Table 2 lists the  
 2 total number of agreements in Table 1 with each company.  
 3  
 4  
 5

**Table 1: Agreements That Should Have Been Filed for Commission Approval**

1.	Eschelon (formerly ATI)	Confidential/Trade Secret Stipulation with US WEST dated 2/28/00
2.	Eschelon	Trial Agreement with Qwest dated 7/21/00
3.	Eschelon	Confidential Purchase Agreement with Qwest dated 11/15/00
4.	Eschelon	Confidential Amendment to Confidential/Trade Secret Stipulation with Qwest dated 11/15/00
5.	Eschelon	Escalation Procedures Letter from Qwest dated 11/15/00
6.	Eschelon	Daily Usage Information Letter from Qwest dated 11/15/00
7.	Eschelon	Feature Letter from Qwest dated 11/15/00
8.	Eschelon	Confidential Billing Settlement Agreement with Qwest dated 11/15/00
9.	Eschelon	Status of Switched Access Minute Reporting Letter from Qwest dated 7/3/01
10.	Eschelon	Implementation Plan with Qwest dated 7/31/01
11.	McLeod	Confidential Settlement Document with US WEST dated 4/25/00
12.	McLeod	Confidential Billing Settlement Agreement with Qwest dated 9/29/00
13.	McLeod	Amendment to Confidential Billing Settlement Agreement with Qwest dated 10/26/00
14.	McLeod	Volume Discount Agreement with Qwest dated on or around 10/26/00
15.	McLeod	Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (McLeod buys from Qwest) dated 10/26/00
16.	McLeod	Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (Qwest buys from McLeod) dated 10/26/00
17.	Electric Lightwave	Confidential Settlement Agreement and Release with US WEST dated 6/16/99
18.	Electric Lightwave	Confidential Billing Settlement Agreement and Release with US WEST dated 12/30/99
19.	Electric Lightwave	Amendment No. 1 to Confidential Billing Settlement Agreement and Release with US WEST dated 6/21/00
20.	Electric Lightwave	Binding Letter Agreement with Qwest dated 7/19/01
21.	Allegiance	Internetwork Calling Name Delivery Service Agreement with US WEST dated 3/23/00
22.	Allegiance	Directory Assistance Agreement with US WEST dated 6/29/00
23.	Global Crossing	Settlement Agreement and Release with Qwest dated 9/18/00
24.	GST	Confidential Billing Dispute Settlement Agreement and Release with US WEST dated 1/7/00
25.	Paging Network	Confidential Billing Settlement Agreement with Qwest dated 4/23/01
26.	SBC & NAS	Confidential Consent to Assignment & Collocation Change of Responsibility Agreement with Qwest dated 6/1/01
27.	WorldCom	Confidential Billing Settlement Agreement with Qwest dated 12/17/00
28.	XO (formerly Nextlink)	Confidential Billing Settlement Agreement with US WEST dated 5/12/00

**Table 2: Agreements That Should Have Been Filed for Commission Approval by Number Per Company**

Company	Number of Agreements
Eschelon	10
McLeod	6
Electric Lightwave	4
Allegiance	2
Global Crossing	1
GST	1
NAS	1
Paging Network	1
SBC	1
WorldCom	1
XO	1

**Q. Why does the list of agreements in Table 1 differ from the list provided by Staff in Exhibit G, Category 1, of its Supplemental Report?**

**A.** Staff has conducted a more thorough analysis of the unfiled agreements since the Supplemental Report was issued on August 14, 2002. This more thorough analysis was necessary due to: 1) the additional information which had been obtained from discovery issued by Staff and other parties since August 14, 2002, which included receipt of additional agreements, and 2) the issuance of the FCC Order on October 4, 2002. The FCC Order also provided specific examples of the types of agreements which would qualify as interconnection agreements under the 1996 Act, which assisted Staff in its subsequent review of the unfiled agreements.

**Q. Have any agreements in Table 1 been terminated, superseded, or have expired?**

**A.** Yes. Some of the agreements in Table 1 which should have been filed were terminated, superseded, or had expired (hereafter referred to as terminated) in their entirety. Other agreements in Table 1 were not terminated in their entirety, but the portions of the agreements which fell under the filing standard were terminated in their entirety. Of the 28 agreements in Table 1, 23 fall under these two categories. These agreements are listed in Table 3. Of the agreements in Table 1, Staff believes that only the Confidential/Trade

1 Secret Stipulation with Eschelon and US WEST dated February 28, 2000, was terminated  
 2 in part, but other portions which fell under the filing standard have not been terminated.  
 3 More detail on the termination of these agreements will be provided in the detailed  
 4 summary of each agreement.

5  
 6 **Table 3: Terminated Agreements**

1.	Eschelon	Trial Agreement with Qwest dated 7/21/00
2.	Eschelon	Confidential Purchase Agreement with Qwest dated 11/15/00
3.	Eschelon	Confidential Amendment to Confidential/Trade Secret Stipulation with Qwest dated 11/15/00
4.	Eschelon	Escalation Procedures Letter from Qwest dated 11/15/00
5.	Eschelon	Daily Usage Information Letter from Qwest dated 11/15/00
6.	Eschelon	Feature Letter from Qwest dated 11/15/00
7.	Eschelon	Confidential Billing Settlement Agreement with Qwest dated 11/15/00
8.	Eschelon	Status of Switched Access Minute Reporting Letter from Qwest dated 7/3/01
9.	Eschelon	Implementation Plan with Qwest dated 7/31/01
10.	McLeod	Confidential Settlement Document with US WEST dated 4/25/00
11.	McLeod	Confidential Billing Settlement Agreement with Qwest dated 9/29/00
12.	McLeod	Amendment to Confidential Billing Settlement Agreement with Qwest dated 10/26/00
13.	McLeod	Volume Discount Agreement with Qwest dated on or around 10/26/00
14.	McLeod	Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (McLeod buys from Qwest) dated 10/26/00
15.	McLeod	Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (Qwest buys from McLeod) dated 10/26/00
16.	Electric Lightwave	Confidential Settlement Agreement and Release with US WEST dated 6/16/99
17.	Electric Lightwave	Confidential Billing Settlement Agreement and Release with US WEST dated 12/30/99
18.	Electric Lightwave	Amendment No. 1 to Confidential Billing Settlement Agreement and Release with US WEST dated 6/21/00
19.	Electric Lightwave	Binding Letter Agreement with Qwest dated 7/19/01
20.	Global Crossing	Settlement Agreement and Release with Qwest dated 9/18/00
21.	GST	Confidential Billing Dispute Settlement Agreement and Release with US WEST dated 1/7/00
22.	WorldCom	Confidential Billing Settlement Agreement with Qwest dated 12/17/00
23.	XO (formerly Nextlink)	Confidential Billing Settlement Agreement with US WEST dated 5/12/00

1 **Q. Has Qwest filed portions of any of the agreements in Table 1 for Commission**  
2 **approval prior to or since the inception of this proceeding?**

3 **A.** Yes. Qwest filed some of the provisions of the agreements in Table 1 for Commission  
4 approval before and during this proceeding. Staff will discuss these filings within its  
5 discussions of each agreement later in this testimony.

6

7 **Q. Why should the agreements in Table 1 have been filed with the Commission?**

8 **A.** All of these agreements meet the definition of an interconnection agreement as clarified by  
9 the FCC in its Order and as summarized by Staff earlier in this testimony. Staff will  
10 provide detailed information on each of these agreements including: 1) a description of the  
11 agreement, 2) the provisions of the agreement which meet the definition of an  
12 interconnection agreement which should have been filed, 3) non-participation clauses  
13 within the agreement, and 4) the effective date of the agreement if it is not the execution  
14 date (including whether the agreement was terminated, expired, canceled, or superceded  
15 and when). Staff will also address whether Qwest's non-filing was an intentional  
16 violation of any federal or state law or rule.

17

18 **Q. What portions of the agreements in Table 1 should have been filed with the**  
19 **Commission?**

20 **A.** Staff believes that all of the agreements in Table 1 should have been filed for Commission  
21 approval in their entirety, with exceptions. Decision No. 65475, dated December 19,  
22 2002, approved 15 previously unfiled agreements as being in the public interest, as long as  
23 certain provisions were excised. The provisions that pertain to non-participation,  
24 confidentiality, and confidential arbitration were not approved. Clauses within the  
25 agreements which held that another state's law besides Arizona law would govern the  
26 interpretation of the agreement in the event of a dispute in Arizona were also not

1 approved.<sup>2</sup> If the agreements in Table 1 contain similar clauses, then at the time Qwest  
2 files them for Commission approval, Staff recommends that the Commission find these  
3 same portions of the agreements not to be in the public interest and require Qwest to  
4 excise them.

5  
6 **Q. When do the agreements in Table 1 need to be filed for approval with the**  
7 **Commission?**

8 A. Pursuant to A.A.C. R14-2-1506, the agreements in Table 1 should have been filed for  
9 Commission approval within 30 calendar days of the execution date of the agreements.  
10 Therefore, since these agreements were not filed in accordance with this rule, the  
11 agreements should be filed immediately for Commission approval. Staff's position  
12 throughout this proceeding has been that Qwest should file any interconnection  
13 agreements with the Commission for approval.

14  
15 **AGREEMENTS THAT HAVE BEEN FILED**

16 **Q. Has Qwest filed any previously unfiled agreements for Commission approval since**  
17 **the inception of this proceeding?**

18 A. Yes. Qwest filed 15 previously unfiled agreements for Commission approval in  
19 September 2002. Of those 15 agreements, only 14 pertain to Arizona.<sup>3</sup> These 14  
20 agreements are listed in Table 4.

21  

---

<sup>2</sup> One agreement approved in Decision No. 65475, the Confidential Billing Settlement Agreement with XO (XO Subs) and Qwest dated December 31, 2001, stated that New York law would govern the Agreement. This clause was approved since it related directly to XO bankruptcy proceedings in that state.

<sup>3</sup> The fifteenth agreement, the Confidential Settlement Agreement with Scindo and Qwest dated May 4, 2001, contained terms that only applied to Colorado.

1 **Table 4: Agreements Filed for Commission Approval in September 2002**

1.	AT&T	Facility Decommissioning Reimbursement Agreement with Qwest dated 12/27/01
2.	Covad	US WEST Service Level Agreement Unbundled Loop Services dated 4/19/00
3.	Ernest	Confidential Settlement Agreement and Release with Qwest dated 9/17/01
4.	Eschelon	Settlement Agreement with Qwest dated 3/1/02
5.	Global Crossing	Confidential Billing Settlement Agreement with Qwest dated 7/13/01
6.	Integra Telecom	Facility Decommissioning Agreement with Qwest dated 11/20/01
7.	McLeod	Confidential Billing Settlement Agreement with US WEST dated 4/28/00
8.	McLeod	Escalation Procedures Letter from Qwest Communications International ("QCI") dated 10/26/00
9.	SBC	Proposed Settlement Terms Letter from US WEST dated 6/1/00
10.	SBC	Facility Decommissioning Agreement with Qwest dated 10/5/01
11.	Williams	Facility Decommissioning Agreement with Qwest dated 10/2/01
12.	WorldCom	Business Escalation Agreement with Qwest Services Corp. ("QSC") dated 6/29/01
13.	WorldCom	Confidential Billing Settlement Agreement (Non-COBRA) with Qwest dated 6/29/01
14.	XO (Subs)	Confidential Billing Settlement Agreement with Qwest dated 12/31/01

2  
3 On September 9, 2002, Qwest filed 13 of these agreements. On September 17, 2002,  
4 Qwest filed the agreement with Williams Local Network, Inc. For each of these 14  
5 agreements, Qwest bracketed the portions of the agreements which it believes relate to  
6 Section 251(b) or (c) services, and have not been superseded or terminated by another  
7 agreement, Commission Order, or otherwise, and are therefore, according to Qwest,  
8 subject to approval under Section 252. The Commission reviewed the agreements that  
9 were filed in their entirety and did not limit its review to the portions that Qwest  
10 bracketed. Decision No. 65475 dated December 19, 2002, approved these agreements as  
11 being in the public interest, as long as certain provisions were excised. The provisions  
12 that pertain to non-participation, confidentiality, and confidential arbitration were not  
13 approved. Clauses within the agreements which held that another state's law besides  
14 Arizona law would govern the interpretation of the agreement in the event of a dispute in  
15 Arizona were also not approved.<sup>4</sup>  
16

<sup>4</sup> As stated earlier, the governing law clause in the Confidential Billing Settlement Agreement with XO (XO Subs) and Qwest dated December 31, 2001, was approved.

1 Decision No. 65475 deferred the issue of whether Qwest's redaction of portions of these  
2 agreements was appropriate. In general, Qwest redacted the following provisions  
3 contained in the 14 agreements: 1) lump-sum payment amounts, 2) specific facility  
4 locations, and 3) CLEC minutes of use. Staff believes that where a lump sum payment  
5 amount is a legitimate settlement of past disputes, it is appropriate for Qwest to redact  
6 these numbers. Additionally, specific facility locations and CLEC specific minutes of use  
7 are information that the CLECs consider confidential and do not want disclosed to other  
8 carriers.

9  
10 This decision also deferred the issue of whether the provision in the Settlement Agreement  
11 between Eschelon and Qwest dated March 1, 2002, which terminated 8 agreements  
12 between the parties, was in the public interest. Qwest states in its Direct Testimony that  
13 these agreements were terminated to address the concerns of other parties that the  
14 agreements were discriminatory. However, Staff believes that by terminating these  
15 agreements Qwest also gained the ability to argue that since the agreements were  
16 terminated, they did not need to be filed for Commission approval. If by terminating these  
17 agreements Qwest's sole intent was to be able to argue that these agreements do not need  
18 to be filed for Commission approval, then this provision of the Settlement Agreement is  
19 not in the public interest.

20  
21 **Q. Please discuss why Qwest has not filed any of the agreements in Table 1 for**  
22 **Commission approval.**

23 **A.** There are three main reasons given by Qwest for not filing all of the unfiled agreements  
24 which Staff believes should have been filed. First, Qwest believes that some of these  
25 agreements do not qualify as interconnection agreements in that they do not contain  
26 ongoing obligations that pertain to Section 251(b) or (c) services. Second, Qwest does not

1 believe that terminated agreements should be filed since they no longer contain ongoing  
2 obligations. Third, Qwest believes that some of these agreements are actually service  
3 order or contract forms that are used to request service, and do not need to be filed  
4 according to the recent FCC Order. Specifically, Qwest states that two agreements in  
5 Table 1 fall under these categories: 1) the Internetwork Calling Name Delivery Service  
6 Agreement dated March 23, 2000, and 2) the Directory Assistance Agreement dated June  
7 29, 2000. (Please see attachments Exhibits S-3 and S-4.) Both of these agreements are  
8 with Allegiance. Qwest provided samples to Staff of what it considers to be service order  
9 or contract forms. (Please see attachment Exhibit S-5.) One sample did closely resemble  
10 these two Allegiance agreements. However, the sample is clearly a template agreement.  
11 Staff disagrees that the Internetwork Calling Name Delivery Service Agreement and the  
12 Directory Assistance Agreement are service order or contract forms, but does agree that  
13 they are based on template agreements. However, since agreements based on a template  
14 can still contain variations from one company to another, Staff believes that the  
15 agreements should have been filed. Also, Qwest has filed with the Commission  
16 agreements with other carriers that have also been based on template agreements. (Please  
17 see attachment Exhibit S-6.)

18  
19 RELATIONSHIP BETWEEN ESCHELON AND QWEST

20 **Q. Please describe the relationship between Eschelon, US WEST, and later, Qwest?**

21 **A.** Staff believes that the relationship between Eschelon, US WEST, and later, Qwest, was  
22 unique and discriminated against other CLECs who could not view and possibly opt-in to  
23 the agreements between the parties since they were not publicly filed. (Please see  
24 attachment Exhibit S-7.) Qwest and Eschelon benefited from this relationship, while other  
25 CLECs did not.  
26

1 US WEST was providing poor wholesale service to Eschelon. Following the merger,  
2 Qwest indicated it desired to improve its business relationship with its wholesale  
3 customers, such as Eschelon. During the first half of 2000, Eschelon decided that it  
4 wanted to move its customers to the Unbundled Network Element-Platform ("UNE-P")  
5 from resale since this would result in cost savings and increased revenues. However, the  
6 price of UNE-P was not attractive to Eschelon. The main issues with Qwest, from  
7 Eschelon's standpoint, were UNE-P pricing, improving service quality, and escalation  
8 procedures. Negotiations began between the two companies on these issues. These  
9 negotiations culminated in the following:

- 10  
11 1. The creation of a new product called UNE-Star or also referred to as UNE-E.  
12 UNE-E was similar to UNE-P in that it would enable Eschelon to collect switched  
13 access revenues and it would be a combination of loop, switching, and transport.  
14 However, Eschelon would avoid the provisioning issues associated with UNE-P,  
15 such as submitting individual Local Service Requests ("LSRs") for each line. This  
16 would save Eschelon the hassle potentially involved in conversions from resale to  
17 UNE-P. It appears that the process for conversions from resale to UNE-E was also  
18 going to be problematic. Therefore, Qwest decided that the "conversion" would be  
19 done at a billing level, in which Qwest would bill at resale, then true-up the  
20 difference for UNE-E prices. Qwest would also provide switched access  
21 information that would enable Eschelon to bill and collect switched access  
22 revenues from interexchange carriers. (Please see attachment Exhibit S-8.)
- 23 2. **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (please see attachment  
24 Exhibit S-9) **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (Please see  
25 attachment Exhibit S-10.) **[BEGIN CONFIDENTIAL] [END**  
26 **CONFIDENTIAL]** (Please see attachment Exhibit S-11.)

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- 3. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]
- 4. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] (Please see attachment Exhibit S-12.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] (Please see Footnotes 3 and 11 in attachment Exhibit S-13.)
- 5. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]
- 6. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] (Please see attachment Exhibit S-14.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] (Please see attachment Exhibit S-15.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] (Please see attachment Exhibit S-16.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] (Please see attachment Exhibit S-17, which refers to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

Both Qwest and Eschelon had benefited from their unique and discriminatory relationship. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Since the agreements between Eschelon and Qwest were not filed, other CLECs could not opt-in to these agreements. This spared Qwest the cost of providing these same terms to other carriers. These other carriers were discriminated against by the existence of the unfiled agreements between Eschelon and Qwest. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] (Please see attachment Exhibit S-18.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] The decision to enter into a unique and discriminatory relationship with Eschelon was an intentional and willful decision by Qwest.

1 **Q. Please discuss Staff's position toward the testimony provided by RUCO on the**  
2 **relationship with Eschelon and Qwest.**

3 **A.** RUCO provided much detailed information related to the facts behind the relationship  
4 between Eschelon and Qwest. Staff believes that RUCO's description of these facts (and  
5 related exhibits) as set forth on page 54, line 16, through page 67, line 12 of the Direct  
6 Testimony of RUCO's witness Clay Deanhardt presents an accurate picture of the  
7 relationship between Eschelon and Qwest.

8  
9 **Q. Please discuss Staff's position toward the testimony provided by RUCO on the**  
10 **consulting arrangement between Eschelon and Qwest.**

11 **A.** RUCO provided much detailed information related to the consulting arrangement between  
12 Eschelon and Qwest. Staff believes that RUCO's description of this arrangement (and  
13 related exhibits) as set forth on page 56, line 18, through page 61, line 16 of the Direct  
14 Testimony of RUCO's witness Clay Deanhardt presents an accurate picture of the  
15 consulting arrangement between Eschelon and Qwest. **[BEGIN CONFIDENTIAL]**  
16 **[END CONFIDENTIAL]** (Please see attachment Exhibit S-19.) **[BEGIN**  
17 **CONFIDENTIAL]** **[END CONFIDENTIAL]**

18  
19 **Q. Please discuss Staff's position toward the testimony provided by RUCO that a**  
20 **violation of A.R.S. Section 13-2310 and Section 13-2311 occurred with respect to the**  
21 **relationship with Eschelon and Qwest.**

22 **A.** A.R.S. Section 13-2310 and Section 13-2311 relate to fraudulent practices by companies  
23 in connection with the business they conduct with Arizona state agencies. The issue of  
24 whether a violation of A.R.S. Section 13-2310 and Section 13-2311 occurred is best left to  
25 the appropriate state agency.

26

1 AGREEMENTS BETWEEN ESCHELON AND QWEST THAT SHOULD HAVE BEEN  
2 FILED

3 **1. Confidential/Trade Secret Stipulation with Eschelon (formerly ATI) and**  
4 **US WEST dated 2/28/00**

5 **Q. Please briefly summarize the Confidential/Trade Secret Stipulation with Eschelon**  
6 **(formerly ATI) and US WEST dated 2/28/00, and the reasons why Staff believes it**  
7 **should be filed for Commission approval.**

8 **A.** The Stipulation creates ongoing obligations that pertain to resale, UNEs, reciprocal  
9 compensation, interconnection, and wholesale services in general under Section 251(b)  
10 and (c). (Please see attachment Exhibit S-20.) **[BEGIN CONFIDENTIAL] [END**  
11 **CONFIDENTIAL]** Qwest states in its Direct Testimony that reciprocal compensation for  
12 internet-related traffic is not under state commission jurisdiction. Staff disagrees. On  
13 April 27, 2001, the FCC issued its Order on Remand and Report and Order in CC Docket  
14 No. 96-98 and CC Docket 99-68 on this issue ("FCC Intercarrier Compensation for ISP-  
15 Bound Traffic Order"). (Please see attachment Exhibit S-21.) According to this Order,  
16 reciprocal compensation for internet-related traffic is a proper subject for interconnection  
17 agreements that are filed for state commission approval. **[BEGIN CONFIDENTIAL]**  
18 **[END CONFIDENTIAL]** Qwest is in agreement with Staff that this Agreement contains  
19 portions which fall under the filing standard set forth by the FCC. (Please see Exhibit  
20 LBB-1 of the Direct Testimony of Larry B. Brotherson.)

1 **Q. Was an agreement filed with the Commission that contained [BEGIN**  
2 **CONFIDENTIAL] [END CONFIDENTIAL] of the Confidential/Trade Secret**  
3 **Stipulation with Eschelon (formerly ATI) and US WEST dated 2/28/00?**

4 **A. Staff could find no record that an agreement which contained [BEGIN**  
5 **CONFIDENTIAL] [END CONFIDENTIAL] was filed for Commission approval in**  
6 **Arizona.**

7  
8 **Q. Does the Confidential/Trade Secret Stipulation with Eschelon (formerly ATI) and US**  
9 **WEST dated 2/28/00 contain a regulatory non-participation clause?**

10 **A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

11  
12 **Q. Has this Stipulation, or a portion thereof, been terminated, superseded, or has it**  
13 **expired?**

14 **A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

15  
16 **2. Trial Agreement with Eschelon and Qwest dated 7/21/00**

17 **Q. Please briefly summarize the Trial Agreement with Eschelon and Qwest dated**  
18 **7/21/00, and the reasons why Staff believes it should be filed for Commission**  
19 **approval.**

20 **A. The Trial Agreement creates ongoing obligations that pertain to interconnection, UNEs,**  
21 **and wholesale services under Section 251(b) and (c). (Please see attachment Exhibit S-**  
22 **22.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

23  
24 **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
25 **expired?**

26 **A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

1     **3.     *Confidential Purchase Agreement with Eschelon and Qwest dated 11/15/00***

2     **Q.     Please briefly summarize the Confidential Purchase Agreement with Eschelon and**  
3     **Qwest dated 11/15/00, and the reasons why Staff believes it should be filed for**  
4     **Commission approval.**

5     **A.     This Agreement contains ongoing obligations that pertain to UNEs, interconnection, and**  
6     **wholesale services under Section 251(b) and (c). (Please see attachment Exhibit S-23.)**  
7     **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

8  
9     **Q.     Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
10    **expired?**

11    **A.     Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

12  
13    **4.     *Confidential Amendment to the Confidential/Trade Secret Stipulation with***  
14    ***Eschelon and Qwest dated 11/15/00***

15    **Q.     Please briefly summarize the Confidential Amendment to the Confidential/Trade**  
16    **Secret Stipulation with Eschelon and Qwest dated 11/15/00, and the reasons why**  
17    **Staff believes it should be filed for Commission approval.**

18    **A.     This Amendment contains ongoing obligations that pertain to UNEs, interconnection, and**  
19    **wholesale services under Section 251(b) and (c). (Please see attachment Exhibit S-24.)**  
20    **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Qwest is in agreement with**  
21    **Staff that this Amendment contains portions which fall under the filing standard set forth**  
22    **by the FCC. (Please see Exhibit LBB-1 of the Direct Testimony of Larry B. Brotherson.)**

23  
24    **Q.     Has this Amendment, or a portion thereof, been terminated, superseded, or has it**  
25    **expired?**

26    **A.     Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

1           **5.       *Escalation Procedures Letter from Qwest to Eschelon dated 11/15/00***

2           **Q.       Please briefly summarize the Escalation Procedures Letter from Qwest to Eschelon**  
3           **dated 11/15/00, and the reasons why Staff believes it should be filed for Commission**  
4           **approval.**

5           **A.       This Letter creates ongoing obligations that pertain to interconnection, UNEs, and**  
6           **wholesale services under Section 251(b) and (c). (Please see attachment Exhibit S-25.)**  
7           **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Qwest is in agreement with**  
8           **Staff that this Letter contains portions which fall under the filing standard set forth by the**  
9           **FCC. (Please see Exhibit LBB-1 of the Direct Testimony of Larry B. Brotherson.)**

10  
11          **Q.       Does the Escalation Procedures Letter from Qwest to Eschelon dated 11/15/00**  
12          **contain regulatory non-participation clauses?**

13          **A.       Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

14  
15          **Q.       Has this Letter, or a portion thereof, been terminated, superseded, or has it expired?**

16          **A.       Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

17  
18          **6.       *Daily Usage Information Letter from Qwest to Eschelon dated 11/15/00***

19          **Q.       Please briefly summarize the Daily Usage Information Letter from Qwest to**  
20          **Eschelon dated 11/15/00, and the reasons why Staff believes it should be filed for**  
21          **Commission approval.**

22          **A.       This Letter creates an ongoing obligation that pertains to UNEs. (Please see attachment**  
23          **Exhibit S-26.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Qwest is in**  
24          **agreement with Staff that this Letter contains portions which fall under the filing standard**  
25          **set forth by the FCC. (Please see Exhibit LBB-1 of the Direct Testimony of Larry B.**  
26          **Brotherson.)**

1 **Q. Has this Letter, or a portion thereof, been terminated, superseded, or has it expired?**

2 **A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] (Please see attachment**  
3 **Exhibit S-27.)**

4

5 **7. *Feature Letter from Qwest to Eschelon dated 11/15/00***

6 **Q. Please briefly summarize the Feature Letter from Qwest to Eschelon dated 11/15/00,**  
7 **and the reasons why Staff believes it should be filed for Commission approval.**

8 **A. This Letter creates an ongoing obligation that pertains to UNEs. (Please see attachment**  
9 **Exhibit S-28.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

10

11 **Q. Has this Letter, or a portion thereof, been terminated, superseded, or has it expired?**

12 **A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

13

14 **8. *Confidential Billing Settlement Agreement with Eschelon and Qwest dated***  
15 ***11/15/00***

16 **Q. Please briefly summarize the Confidential Billing Settlement Agreement with**  
17 **Eschelon and Qwest dated 11/15/00, and the reasons why Staff believes it should be**  
18 **filed for Commission approval.**

19 **A. This Agreement creates ongoing obligations that pertain to resale and UNEs. (Please see**  
20 **attachment Exhibit S-29.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

21

22 **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
23 **expired?**

24 **A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

25



1 RELATIONSHIP BETWEEN MCLEOD AND QWEST

2 **Q. Please describe the relationship between McLeod, US WEST, and later, Qwest.**

3 **A.** Staff believes that the relationship between McLeod, US WEST, and later, Qwest, was  
4 similar to the relationship between Eschelon, US WEST, and Qwest. The relationship  
5 between McLeod, US WEST, and later, Qwest, was unique and discriminated against  
6 other CLECs who could not view and possibly opt-in to the agreements between the  
7 parties since they were not publicly filed. (Please see attachment Exhibit S-32.) Qwest  
8 and McLeod benefited from this relationship, while other CLECs did not.

9  
10 US WEST was providing poor wholesale service to McLeod. Following the merger,  
11 Qwest indicated it desired to improve its business relationship with its wholesale  
12 customers, such as McLeod. During the first half of 2000, McLeod decided that it wanted  
13 to move its customers to UNE-P from resale since this would result in cost savings and  
14 increased revenues. However, the price of UNE-P was not attractive to McLeod.  
15 Negotiations began between the two companies on this issue. These negotiations  
16 culminated in the following:

- 17  
18 1. The creation of a new product called UNE-Star or also referred to as UNE-M. This is  
19 the same product as UNE-E, which was developed for Eschelon. UNE-M was similar  
20 to UNE-P in that it would enable McLeod to collect switched access revenues and it  
21 would be a combination of loop, switching, and transport. However, McLeod would  
22 avoid the provisioning issues associated with UNE-P, such as submitting individual  
23 Local Service Requests ("LSRs") for each line. This would save McLeod the hassle  
24 potentially involved in conversions from resale to UNE-P. It appears that the process  
25 for conversions from resale to UNE-M was also going to be problematic. Therefore,  
26 Qwest decided that the "conversion" would be done at a billing level, in which Qwest

1 would bill at resale, then true-up the difference for UNE-M prices. Qwest would also  
2 provide switched access information that would enable McLeod to bill and collect  
3 switched access revenues from interexchange carriers. (Please see attachment Exhibit  
4 S-8.)

5 2. **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (Please see attachment  
6 Exhibit S-33.)

7 3. **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** Staff did not receive this  
8 agreement from Qwest when Qwest produced all unfiled agreements in March and  
9 April 2002. Staff first received a copy of this agreement from McLeod in July 2002 in  
10 its response to a Staff data request for all interconnection agreements it had with  
11 Qwest. Arizona is not the only state in which Qwest failed to initially produce this  
12 agreement. New Mexico opened a proceeding to investigate Qwest's compliance with  
13 Section 252(e). The New Mexico Commission also did not receive this agreement  
14 from Qwest when Qwest filed its set of previously unfiled agreements in April 2002.  
15 Qwest responded that it inadvertently did not provide the agreement to the New  
16 Mexico Commission initially, but that it did produce the agreement in May 2002.  
17 (Please see attachment Exhibit S-34.) After the Arizona Commission received a copy  
18 of the McLeod Purchase Agreement from McLeod, Qwest did not notify the  
19 Commission that it inadvertently did not file the McLeod Purchase Agreement. Also,  
20 while Qwest failed to produce the McLeod Purchase Agreement to the Arizona  
21 Commission, Qwest did provide the Arizona Commission with two similar  
22 agreements. One of these agreements stated that Qwest would purchase services from  
23 McLeod ("Qwest Purchase Agreement") and was executed on the same day as the  
24 McLeod Purchase Agreement. Another similar agreement committed Eschelon to  
25 **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.

26 4. **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

- 1           5. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]  
2           6. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] [BEGIN  
3           CONFIDENTIAL] [END CONFIDENTIAL]  
4

5           Both Qwest and McLeod benefited from their unique and discriminatory relationship.  
6           [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] Since the agreements between  
7           McLeod and Qwest were not filed, other CLECs could not opt-in to these agreements.  
8           This spared Qwest the cost of providing these same terms to other carriers. These other  
9           carriers were discriminated against by the existence of the unfiled agreements between  
10          McLeod and Qwest. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] (Please see  
11          attachment Exhibit S-18.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] The  
12          decision to enter into a unique and discriminatory relationship with McLeod was an  
13          intentional and willful decision by Qwest.

- 14  
15       **Q. Please discuss Staff's position toward the testimony provided by RUCO on the**  
16       **relationship with McLeod and Qwest.**  
17       **A.** RUCO provided much detailed information related to the facts behind the relationship  
18       between McLeod and Qwest. Staff believes that RUCO's description of these facts (and  
19       related exhibits) as set forth on page 12, line 5, through page 50, line 6 of the Direct  
20       Testimony of RUCO's witness Clay Deanhardt presents an accurate picture of the  
21       relationship between McLeod and Qwest.

1 **Q. Please discuss Staff's position toward the testimony provided by RUCO that a**  
2 **violation of A.R.S. Section 13-2310 and Section 13-2311 occurred with respect to the**  
3 **relationship with McLeod and Qwest.**

4 **A.** A.R.S. Section 13-2310 and Section 13-2311 relate to fraudulent practices by companies  
5 in connection with the business they conduct with Arizona state agencies. The issue of  
6 whether a violation of A.R.S. Section 13-2310 and Section 13-2311 occurred is best left to  
7 the appropriate state agency.

8  
9 **Q. Are there any other issues Staff wants to address regarding RUCO's testimony in**  
10 **this docket?**

11 **A.** RUCO's testimony focused on Qwest's relationships with Eschelon and McLeod. RUCO  
12 did not discuss unfiled agreements with other carriers in its testimony.

13  
14 AGREEMENTS BETWEEN MCLEOD AND QWEST THAT SHOULD HAVE BEEN FILED

15 ***11. Confidential Settlement Document with McLeod and US WEST dated***  
16 ***4/25/00***

17 **Q. Please briefly summarize the Confidential Settlement Document with McLeod and**  
18 **US WEST dated 4/25/00, and the reasons why Staff believes it should be filed for**  
19 **Commission approval.**

20 **A.** The Document creates ongoing obligations that pertain to dialing parity, UNEs, reciprocal  
21 compensation, interconnection, and wholesale services under Section 251(b) and (c).  
22 (Please see attachment Exhibit S-35.) **[BEGIN CONFIDENTIAL] [END**  
23 **CONFIDENTIAL]**

1 Q. Did the parties amend their interconnection agreements in Arizona according to  
2 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]?

3 A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]  
4

5 Q. Does the Confidential Settlement Document with McLeod and US WEST dated  
6 4/25/00 contain a regulatory non-participation clause?

7 A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]  
8

9 Q. Has this Document, or a portion thereof, been terminated, superseded, or has it  
10 expired?

11 A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]  
12

13 **12. Confidential Billing Settlement Agreement with McLeod and Qwest dated**  
14 **9/29/00**

15 Q. Please briefly summarize the Confidential Billing Settlement Agreement with  
16 McLeod and Qwest dated 9/29/00, and the reasons why Staff believes it should be  
17 filed for Commission approval.

18 A. The Agreement creates ongoing obligations that pertain to resale and UNEs. (Please see  
19 attachment Exhibit S-36.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]  
20

21 Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it  
22 expired?

23 A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]



1           **CONFIDENTIAL] [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (Please  
2           see attachment Exhibit S-41.) **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**  
3           (Please see attachments Exhibits S-32, S-40, and S-42.) **[BEGIN CONFIDENTIAL]**  
4           **[END CONFIDENTIAL]**

5  
6           **Q. Please discuss Staff's position toward the testimony provided by RUCO on the**  
7           **Volume Discount Agreement with McLeod and Qwest.**

8           **A.** RUCO provided much detailed information related to the facts behind the Volume  
9           Discount Agreement between McLeod and Qwest. Staff believes that RUCO's  
10          description of these facts (and related exhibits) as set forth on page 12, line 5, through  
11          page 50, line 6 of the Direct Testimony of RUCO's witness Clay Deanhardt presents an  
12          accurate picture of the Volume Discount Agreement between McLeod and Qwest.

13  
14          **15. *Purchase Agreement with McLeod and Qwest Communications Corp. and***  
15          ***its subsidiaries ("Qwest") (McLeod buys from Qwest) dated 10/26/00***

16          **Q. Please briefly summarize the Purchase Agreement with McLeod and Qwest (McLeod**  
17          **buys from Qwest) dated 10/26/00, and the reasons why Staff believes it should be**  
18          **filed for Commission approval.**

19          **A.** This Agreement creates ongoing obligations that pertain to interconnection, UNEs, and  
20          wholesale services under Section 251(b) and (c). (Please see attachment Exhibit S-43.)  
21          **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

22  
23          **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
24          **expired?**

25          **A.** Yes, **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**  
26

1     **16.    *Purchase Agreement with McLeod and Qwest Communications Corp. and***  
2                 ***its subsidiaries ("Qwest") (Qwest buys from McLeod) dated 10/26/00***

3     **Q.    Please briefly summarize the Purchase Agreement with McLeod and Qwest (Qwest**  
4                 **buys from McLeod) dated 10/26/00, and the reasons why Staff believes it should be**  
5                 **filed for Commission approval.**

6     **A.    This Agreement creates ongoing obligations that pertain to interconnection, UNEs, and**  
7                 **wholesale services under Section 251(b) and (c). (Please see attachment Exhibit S-44.)**  
8                 **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

9  
10    **Q.    Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
11                 **expired?**

12    **A.    Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

13  
14    **AGREEMENTS WITH OTHER CARRIERS THAT SHOULD HAVE BEEN FILED**

15         **17.    *Confidential Settlement Agreement and Release with Electric Lightwave***  
16                         ***and US WEST dated 6/16/99***

17    **Q.    Please briefly summarize the Confidential Settlement Agreement and Release with**  
18                 **Electric Lightwave and US WEST dated 6/16/99, and the reasons why Staff believes**  
19                 **it should be filed for Commission approval.**

20    **A.    This Agreement creates ongoing obligations that pertain to UNEs, interconnection**  
21                 **wholesale services under Section 251(b) and (c), and reciprocal compensation. (Please**  
22                 **see attachment Exhibit S-45.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

1 Q. Was an interconnection agreement amendment filed based on [BEGIN  
2 CONFIDENTIAL] [END CONFIDENTIAL] of the Confidential Settlement  
3 Agreement and Release with Electric Lightwave and US WEST dated 6/16/99?

4 A. Staff could find no record that an amendment to the parties' interconnection agreements  
5 related to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] was filed for  
6 Commission approval in Arizona.

7  
8 Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it  
9 expired?

10 A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

11  
12 ***18. Confidential Billing Settlement Agreement and Release with Electric***  
13 ***Lightwave and US WEST dated 12/30/99***

14 Q. Please briefly summarize the Confidential Billing Settlement Agreement and Release  
15 with Electric Lightwave and US WEST dated 12/30/99, and the reasons why Staff  
16 believes it should be filed for Commission approval.

17 A. This Agreement creates ongoing obligations that pertain to reciprocal compensation and  
18 interconnection. (Please see attachment Exhibit S-46.) [BEGIN CONFIDENTIAL]  
19 [END CONFIDENTIAL] Qwest is in agreement with Staff that this Agreement contains  
20 portions which fall under the filing standard set forth by the FCC. (Please see Exhibit  
21 LBB-1 of the Direct Testimony of Larry B. Brotherson.)

22  
23 Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it  
24 expired?

25 A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

26

1       **19.    Amendment No. 1 to the Confidential Billing Settlement Agreement and**  
2                                   **Release with Electric Lightwave and US WEST dated 6/21/00**

3       **Q.    Please briefly summarize the Amendment No. 1 to the Confidential Billing**  
4                                   **Settlement Agreement and Release with Electric Lightwave and US WEST dated**  
5                                   **6/21/00, and the reasons why Staff believes it should be filed for Commission**  
6                                   **approval.**

7       **A.    This Amendment creates ongoing obligations that pertain to reciprocal compensation,**  
8                                   **number portability, and interconnection. (Please see attachment Exhibit S-47.) [BEGIN**  
9                                   **CONFIDENTIAL] [END CONFIDENTIAL] Qwest is in agreement with Staff that this**  
10                                  **Amendment contains portions which fall under the filing standard set forth by the FCC.**  
11                                  **(Please see Exhibit LBB-1 of the Direct Testimony of Larry B. Brotherson.)**

12  
13       **Q.    Has this Amendment, or a portion thereof, been terminated, superseded, or has it**  
14                                   **expired?**

15       **A.    Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

16  
17       **20.    Binding Letter Agreement with Electric Lightwave and Qwest dated 7/19/01**

18       **Q.    Please briefly summarize the Binding Letter Agreement with Electric Lightwave and**  
19                                   **Qwest dated 7/19/01, and the reasons why Staff believes it should be filed for**  
20                                   **Commission approval.**

21       **A.    This Agreement creates ongoing obligations that pertain to reciprocal compensation,**  
22                                   **UNEs, interconnection, and wholesale services under Section 251(b) and (c). (Please see**  
23                                   **attachment Exhibit S-48.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

1 **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
2 **expired?**

3 **A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**  
4

5 **21. *Internetwork Calling Name Delivery Service Agreement with Allegiance***  
6 ***and US WEST dated 3/23/00***

7 **Q. Please briefly summarize the Internetwork Calling Name Delivery Service**  
8 **Agreement with Allegiance and US WEST dated 3/23/00, and the reasons why Staff**  
9 **believes it should be filed for Commission approval.**

10 **A. This Agreement creates an ongoing obligation that pertains to interconnection. (Please see**  
11 **attachment Exhibit S-3.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**  
12

13 **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
14 **expired?**

15 **A. No.**  
16

17 **22. *Directory Assistance Agreement with Allegiance and US WEST dated***  
18 ***6/29/00***

19 **Q. Please briefly summarize the Directory Assistance Agreement with Allegiance and**  
20 **US WEST dated 6/29/00, and the reasons why Staff believes it should be filed for**  
21 **Commission approval.**

22 **A. This Agreement creates an ongoing obligation that pertains to dialing parity. (Please see**  
23 **attachment Exhibit S-4.) According to Section 251(b)(3), dialing parity includes non-**  
24 **discriminatory access to telephone numbers, operator services, directory assistance, and**  
25 **directory listings. [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**  
26

1 **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
2 **expired?**

3 **A. No.**

4  
5 **23. *Settlement Agreement and Release with Global Crossing and Qwest dated***  
6 ***9/18/00***

7 **Q. Please briefly summarize the Settlement Agreement and Release with Global**  
8 **Crossing and Qwest dated 9/18/00, and the reasons why Staff believes it should be**  
9 **filed for Commission approval.**

10 **A. This Agreement creates ongoing obligations that pertain to resale and UNE-P. (Please see**  
11 **attachment Exhibit S-49.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**  
12 **Qwest is in agreement with Staff that this Agreement contains portions which fall under**  
13 **the filing standard set forth by the FCC. (Please see Exhibit LBB-1 of the Direct**  
14 **Testimony of Larry B. Brotherson.)**

15  
16 **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
17 **expired?**

18 **A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

19  
20 **24. *Confidential Billing Dispute Settlement Agreement and Release with GST***  
21 ***Telecom and US WEST dated 1/7/00***

22 **Q. Please briefly summarize the Confidential Billing Dispute Settlement Agreement and**  
23 **Release with GST Telecom and US WEST dated 1/7/00, and the reasons why Staff**  
24 **believes it should be filed for Commission approval.**

25 **A. This Agreement creates an ongoing obligation that pertains to reciprocal compensation.**  
26 **(Please see attachment Exhibit S-50.) [BEGIN CONFIDENTIAL] [END**

1           **CONFIDENTIAL]** Qwest is in agreement with Staff that this Agreement contains  
2 portions which fall under the filing standard set forth by the FCC. (Please see Exhibit  
3 LBB-1 of the Direct Testimony of Larry B. Brotherson.)

4  
5           **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
6 **expired?**

7           **A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

8

9           **25. Confidential Billing Settlement Agreement with Paging Network and Qwest**  
10 **dated 4/23/01**

11           **Q. Please briefly summarize the Confidential Billing Settlement Agreement with Paging**  
12 **Network and Qwest dated 4/23/01, and the reasons why Staff believes it should be**  
13 **filed for Commission approval.**

14           **A. This Agreement creates an ongoing obligation that pertains to interconnection. (Please see**  
15 **attachment Exhibit S-51.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

16

17           **Q. Did the parties file an amendment in Arizona according to [BEGIN**  
18 **CONFIDENTIAL] [END CONFIDENTIAL]?**

19           **A. Staff could find no record that an amendment which contained [BEGIN**  
20 **CONFIDENTIAL] [END CONFIDENTIAL] was filed for Commission approval in**  
21 **Arizona.**

22

23           **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
24 **expired?**

25           **A. Staff could find no record that this Agreement has been superseded. According to Qwest,**  
26 **the Agreement was superseded and terminated. Qwest stated that since Paging Network**

1 became a subsidiary of Arch, the Interconnection Agreement of Arch is the agreement that  
2 covers both of these companies. (Please see attachment Exhibit S-52.) [BEGIN  
3 CONFIDENTIAL] [END CONFIDENTIAL]  
4

5 **26. Confidential Consent to Assignment and Collocation Change of**  
6 **Responsibility Agreement with Network Access Solutions Corporation**  
7 **(“NAS”), SBC, and Qwest dated 6/6/01**

8 **Q. Please briefly summarize the Confidential Consent to Assignment and Collocation**  
9 **Change of Responsibility Agreement with Network Access Solutions Corporation**  
10 **(“NAS”), SBC, and Qwest dated 6/6/01, and the reasons why Staff believes it should**  
11 **be filed for Commission approval.**

12 **A. This Agreement creates an ongoing obligation that pertains to collocation. (Please see**  
13 **attachment Exhibit S-53.) [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**  
14

15 **Q. Was the [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of the Confidential**  
16 **Consent to Assignment and Collocation Change of Responsibility Agreement with**  
17 **Network Access Solutions Corporation (“NAS”), SBC, and Qwest dated 6/6/01 filed**  
18 **with the Commission?**

19 **A. Staff could find no record that [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**  
20 **was filed with the Commission.**  
21

22 **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
23 **expired?**

24 **A. Qwest states that this Agreement was superseded by SBC’s Interconnection Agreement,**  
25 **which was approved on July 25, 2000. Qwest states that it is this Interconnection**  
26 **Agreement that governs terms of collocation. Staff would agree, however, Staff could**

1 find no record of the particular collocation issues that are addressed in the Collocation  
2 Change of Responsibility Agreement with Network Access Solutions Corporation  
3 (“NAS”), SBC, and Qwest dated June 6, 2001, in SBC’s Interconnection Agreement.  
4 Therefore, Staff believes that [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]  
5 has not been terminated or superseded and has not expired.

6  
7 **27. Confidential Billing Settlement Agreement with WorldCom and Qwest**  
8 **dated 12/17/00**

9 **Q. Please briefly summarize the Confidential Billing Settlement Agreement with**  
10 **WorldCom and Qwest dated 12/17/00, and the reasons why Staff believes it should be**  
11 **filed for Commission approval.**

12 **A.** This Agreement creates an ongoing obligation that pertains to reciprocal compensation.  
13 (Please see attachment Exhibit S-54.) [BEGIN CONFIDENTIAL] [END  
14 CONFIDENTIAL] Qwest is in agreement with Staff that this Agreement contains  
15 portions which fall under the filing standard set forth by the FCC. (Please see Exhibit  
16 LBB-1 of the Direct Testimony of Larry B. Brotherson.)

17  
18 **Q. Has this Agreement, or a portion thereof, been terminated, superseded, or has it**  
19 **expired?**

20 **A.** Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]



1 This requirement enables other companies to be aware of these agreements soon after they  
2 are executed. Also, the sooner an agreement is filed for approval, the sooner the  
3 agreement can be approved and available for opt-in.

4  
5 **Q. Please discuss the specific unfiled agreements that were subsequently filed with the**  
6 **Commission, but did not meet the 30 day filing requirement in A.A.C. R14-2-**  
7 **1506(A).**

8 **A.** There are five agreements that were subsequently filed by Qwest, but not within the 30  
9 day filing period. These agreements are listed in Table 7. For each of these agreements,  
10 Qwest eventually either filed the agreement or filed an agreement with the same terms for  
11 Commission approval. However, Qwest made each of these filings after 30 days had  
12 passed.

13  
14 **Table 7: Agreements That Did Not Meet the 30 Day Filing Requirement**

1.	Allegiance	Confidential Billing Settlement Agreement with Qwest dated 12/24/01
2.	Allegiance	Coordinated Installation With No Testing Amendment with Qwest dated 1/7/02
3.	Allegiance	Operator Services Agreement with Qwest dated 6/19/02
4.	Arch Communications	Confidential Billing Settlement Agreement with Arch Communications and US WEST dated 6/16/00
5.	AT&T	Interim Amendment to the Interconnection Agreements with AT&T and Qwest dated 6/22/01

15  
16 **Q. Please discuss the Confidential Billing Settlement Agreement with Allegiance and**  
17 **Qwest dated 12/24/01 and the Coordinated Installation With No Testing Amendment**  
18 **with Qwest dated 1/7/02.**

19 **A.** Both the Confidential Billing Settlement Agreement with Allegiance and Qwest dated  
20 December 24, 2001, and the Coordinated Installation With No Testing Amendment with  
21 Allegiance and Qwest dated January 7, 2002, create an ongoing obligation that pertains to

1           UNEs. **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (Please see attachments  
2 Exhibits S-56 and S-57.)

3  
4           The Coordinated Installation With No Testing Amendment with Allegiance and Qwest  
5 dated January 7, 2002, was entered into as the actual interconnection agreement  
6 amendment that was supposed to be filed for Commission approval based on the  
7 Confidential Billing Settlement Agreement with Allegiance and Qwest dated December  
8 24, 2001. However, the Coordinated Installation With No Testing Amendment was not  
9 filed for Commission approval within 30 days of the execution date of the Confidential  
10 Billing Settlement Agreement. On June 6, 2002, Allegiance stated in a data request that  
11 Qwest inadvertently did not file the Coordinated Installation With No Testing  
12 Amendment, but stated that Qwest would file it soon. (Please see attachment Exhibit S-  
13 58.) On June 6, 2002, Qwest filed this Amendment for Commission approval. It was  
14 approved on September 10, 2002, in Decision No. 65180. If the Coordinated Installation  
15 With No Testing Amendment had been filed for Commission approval within 30 days of  
16 December 24, 2001, then Qwest would have complied with the 30 day filing requirement.  
17 However, since the Coordinated Installation With No Testing Amendment was not filed  
18 within 30 days, Qwest did not meet the 30 day filing requirement.

19  
20       **Q. Please discuss the Operator Services Agreement with Allegiance and Qwest dated**  
21       **June 19, 2002.**

22           The Operator Services Agreement with Allegiance and Qwest dated June 19, 2002, creates  
23 an ongoing obligation that pertains to dialing parity. According to Section 251(b)(3),  
24 dialing parity includes non-discriminatory access to telephone numbers, operator services,  
25 directory assistance, and directory listings. Exhibit A of this Agreement contains rates for  
26 operator services that Allegiance will pay to Qwest. The effective date of the rates in

1 Exhibit A was June 19, 2002, the execution date of the Operator Services Agreement.  
2 (Please see attachment Exhibit S-59.)

3  
4 Exhibit A was incorporated into the Operator Service Amendment to the Interconnection  
5 Agreement between the parties, and was later filed for Commission approval. However,  
6 the Operator Service Amendment was not filed for Commission approval within 30 days  
7 of the execution date of the Operator Services Agreement with Allegiance and Qwest  
8 dated June 19, 2002. The Operator Service Amendment was filed for Commission  
9 approval on August 14, 2002, and approved in Decision No. 65398 on November 15,  
10 2002. If the Operator Service Amendment had been filed for Commission approval  
11 within 30 days of June 19, 2002, then Qwest would have complied with the 30 day filing  
12 requirement. However, since the Operator Service Amendment was not filed within 30  
13 days, Qwest did not meet the 30 day filing requirement.

14  
15 **Q. Please discuss the Confidential Billing Settlement Agreement with Arch**  
16 **Communications and US WEST dated June 16, 2000.**

17 The Confidential Billing Settlement Agreement with Arch Communications and US  
18 WEST dated June 16, 2000, creates ongoing obligations that pertain to interconnection  
19 and reciprocal compensation. **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**  
20 (Please see attachment Exhibit S-60.)

21  
22 The terms of the Confidential Billing Settlement Agreement were incorporated into the  
23 new Interconnection Agreement between the parties that was filed for Commission  
24 approval. However, the new Interconnection Agreement was not filed for Commission  
25 approval within 30 days of the execution date of the Confidential Billing Settlement  
26 Agreement. On August 7, 2000, the new Interconnection Agreement between the parties

1 was filed for Commission approval. It was approved on October 10, 2000, in Decision  
2 No. 62947. If the new Interconnection Agreement had been filed for Commission  
3 approval within 30 days of June 16, 2000, then Qwest would have complied with the 30  
4 day filing requirement. However, since the new Interconnection Agreement was not filed  
5 within 30 days, Qwest did not meet the 30 day filing requirement.

6  
7 **Q. Please discuss the Interim Amendment to the Interconnection Agreements with**  
8 **AT&T and Qwest dated June 22, 2001.**

9 **A.** The Interim Amendment to the Interconnection Agreements with AT&T and Qwest dated  
10 June 22, 2001, creates an ongoing obligation that pertains to interconnection. This Interim  
11 Amendment states that Qwest will provide monthly and quarterly reports to AT&T on  
12 interconnection trunks and interoffice trunks carrying local or EAS traffic between  
13 Qwest's tandem and end office switches. The effective date of these terms was June 22,  
14 2001, the execution date of the Interim Amendment. (Please see attachment Exhibit S-  
15 61.)

16  
17 The terms of the Interim Amendment were incorporated into the Third Amendment to the  
18 Interconnection Agreement with AT&T and Qwest dated July 20, 2001, which was later  
19 filed for Commission approval. However, the Third Amendment to the Interconnection  
20 Agreement was not filed for Commission approval within 30 days of the execution date of  
21 the Interim Amendment. On September 13, 2001, the Third Amendment to the  
22 Interconnection Agreement with AT&T and Qwest was filed for Commission approval. It  
23 was approved on November 29, 2001, in Decision No. 64240. If the Third Amendment to  
24 the Interconnection Agreement had been filed for Commission approval within 30 days of  
25 June 22, 2001, then Qwest would have complied with the 30 day filing requirement.

1           However, since the Third Amendment to the Interconnection Agreement was not filed  
2           within 30 days, Qwest did not meet the 30 day filing requirement.

3  
4           **Q.     Does Staff recommend that Qwest file the agreements in Table 7?**

5           **A.**   Staff does not recommend that Qwest be required to file the agreements in Table 7 for  
6           Commission approval. Staff believes that for these five agreements, the time from the  
7           execution date of the agreement to the date the agreement (or agreement with the same  
8           terms) was filed with the Commission was relatively faster than for other unfiled  
9           agreements and demonstrates an effort to submit these interconnection agreements in  
10          accordance with the law. Also, in the case of the Coordinated Installation With No  
11          Testing Amendment, Staff believes that Qwest did not file the Amendment within 30 days  
12          due to inadvertence. The purpose of this discussion is to ensure that Qwest is aware of the  
13          30 day filing requirement and will follow A.A.C. R14-2-1506(A) in filing all  
14          interconnection agreements in the future.

15  
16          **AGREEMENTS THAT DO NOT REQUIRE FILING**

17          **Q.     Did any party argue that additional agreements should be filed?**

18          **A.**   Yes, AT&T argued that 12 additional agreements should be filed that are not in Table 1.  
19          AT&T listed the agreements which it believed should be filed in its comments filed on  
20          May 28, 2002, and on August 29, 2002. These additional agreements are listed in Table 8.

1 **Table 8: Additional Agreements That Should Be Filed According to AT&T**

1.	Eschelon	Confidential Second Amendment to Confidential/Trade Secret Stipulation with Qwest dated 3/19/01
2.	Eschelon	Definitive Settlement Agreement with Qwest dated 2/22/02
3.	McLeod	Confidential Agreement to Provide Directory Assistance Database Entry Services with Qwest dated 2/12/01
4.	McLeod	Confidential Billing Settlement Agreement with Qwest dated 12/31/01
5.	XO	Confidential Billing Settlement Agreement with QCC dated 12/31/01
6.	XO	Take or Pay Agreement with QSC dated 12/31/01
7.	XO	Amendment to Confidential Billing Settlement Agreement with Qwest dated 4/17/01
8.	Scindo	Confidential Settlement Agreement with Qwest dated 5/4/01
9.	Scindo	Confidential Settlement Agreement with Scindo and Qwest dated 8/10/01
10.	e.spire	Confidential Billing Settlement Agreement with Qwest dated 6/20/01
11.	MTI	Confidential Billing Settlement Agreement with Qwest dated 8/30/00
12.	Z-Tel	Memorandum of Understanding with Qwest dated 5/18/01

2  
3 **Q. Why does Staff disagree with AT&T that the Confidential Second Amendment to**  
4 **Confidential/Trade Secret Stipulation with Eschelon and Qwest dated 3/19/01 should**  
5 **be filed?**

6 **A.** This Amendment is a settlement of only past disputes. This Agreement does not contain  
7 any on-going obligation by Qwest that pertains to interconnection, UNEs, or wholesale  
8 services under Section 251(b) or (c).

9  
10 **Q. Why does Staff disagree with AT&T that the Definitive Settlement Agreement with**  
11 **Eschelon and Qwest dated 2/22/02 should be filed?**

12 **A.** This Agreement outlined the contents of a subsequent Agreement, but did not in itself  
13 contain any on-going obligation by Qwest that pertains to interconnection, UNEs, or  
14 wholesale services under Section 251(b) or (c). The subsequent Agreement was the  
15 Settlement Agreement between the parties dated March 1, 2002. As stated earlier in this  
16 testimony, Qwest did file the Settlement Agreement.

1 **Q. Why does Staff disagree with AT&T that the Confidential Billing Settlement**  
2 **Agreement with McLeod and Qwest dated 12/31/01 should be filed?**

3 **A.** This Agreement is a settlement of only past disputes. This Agreement does not contain  
4 any on-going obligation by Qwest that pertains to interconnection, UNEs, or wholesale  
5 services under Section 251(b) or (c).

6  
7 **Q. Why does Staff disagree with AT&T that the Confidential Agreement to Provide**  
8 **Directory Assistance Database Entry Services with McLeod and Qwest dated 2/12/01**  
9 **should be filed?**

10 **A.** This Agreement contains terms which only apply to Minnesota.

11  
12 **Q. Why does Staff disagree with AT&T that the Confidential Billing Settlement**  
13 **Agreement with XO and QCC dated 12/31/01 should be filed?**

14 **A.** This Agreement is between QCC, the unregulated long distance affiliate of Qwest, and  
15 XO. Agreements between QCC and a CLEC are not governed by Section 251 or 252.  
16 This Agreement is also a settlement of only past disputes. This Agreement does not  
17 contain any on-going obligation by Qwest that pertains to interconnection, UNEs, or  
18 wholesale services under Section 251(b) or (c).

19  
20 **Q. Why does Staff disagree with AT&T that the Take or Pay Agreement with XO and**  
21 **QSC dated 12/31/01 should be filed?**

22 **A.** This Agreement states that QSC's affiliates and XO will purchase a certain amount of  
23 services from one another over a period of time. An agreement to only purchase services  
24 is not governed by Section 251 or 252.

25

1 **Q. Why does Staff disagree with AT&T that the Amendment to Confidential Billing**  
2 **Settlement Agreement with XO and Qwest dated 4/17/01 should be filed?**

3 **A.** This Amendment settles past disputes in Utah. It also contains a provision that on a going  
4 forward basis, parties will make a good faith effort to discuss disputes with one another  
5 prior to pursuing the disputed matters in a regulatory forum. However, according to the  
6 Amendment, if compliance with this requirement would deny a party the opportunity to  
7 raise the disputed matters in a regulatory forum, then the parties are not required to  
8 comply with this Amendment. In other words, this term does not preclude XO from  
9 addressing disputed matters before a state commission. This Amendment puts in writing a  
10 basic concept of dispute resolution, that parties will work together in good faith to resolve  
11 their disputes.

12  
13 **Q. Why does Staff disagree with AT&T that the Confidential Billing Settlement**  
14 **Agreement with e.spire and Qwest dated 6/20/01 should be filed?**

15 **A.** This Agreement is a settlement of only past disputes. AT **[BEGIN CONFIDENTIAL]**  
16 **[END CONFIDENTIAL]** However, this Agreement does not contain any on-going  
17 obligation by Qwest that pertains to interconnection, UNEs, or wholesale services under  
18 Section 251(b) or (c).

19  
20 **Q. Why does Staff disagree with AT&T that the Confidential Billing Settlement**  
21 **Agreement with MTI and Qwest dated 8/30/00 should be filed?**

22 **A.** This Agreement is a settlement of only past disputes. This Agreement does not contain  
23 any on-going obligation by Qwest that pertains to interconnection, UNEs, or wholesale  
24 services under Section 251(b) or (c).

25

1 **Q. Why does Staff disagree with AT&T that the Confidential Settlement Agreement**  
2 **with Scindo and Qwest dated 5/4/01 should be filed?**

3 **A.** This Agreement contains terms which only apply to Colorado.  
4

5 **Q. Why does Staff disagree with AT&T that the Confidential Settlement Agreement**  
6 **with Scindo and Qwest dated 8/10/01 should be filed?**

7 **A.** This Agreement contains terms which only apply to Colorado. (Please see attachment  
8 Exhibit S-62.)  
9

10 **Q. Why does Staff disagree with AT&T that the Memorandum of Understanding with**  
11 **Z-Tel and Qwest dated 5/18/01 should be filed?**

12 **A.** [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] This Memorandum does not  
13 contain any on-going obligation by Qwest that pertains to interconnection, UNEs, or  
14 wholesale services under Section 251(b) or (c).  
15

16 **NON-PARTICIPATION AGREEMENTS**

17 **Q. Which agreements in Table 1 contained non-participation clauses?**

18 **A.** [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]  
19

20 **Table 9: Agreements That Should Have Been Filed That Contain Non-Participation Clauses**  
21 **by Type**

22 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]

1 **Q. Did any other unfiled agreements contain non-participation clauses?**

2 **A. Yes, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (Please see attachment  
3 Exhibit S-63.) **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (Please see  
4 attachment Exhibit S-64.)

5  
6 The decision to add non-participation clauses to agreements that Qwest executed with  
7 CLECs was an intentional and willful decision by Qwest.

8  
9 **QWEST'S CONDUCT**

10 **Q. Why did Qwest not file the agreements listed in Table 1?**

11 **A. A large number of agreements which Qwest did not file were with Eschelon and McLeod.**  
12 Both of these companies are relatively large competitors in the local exchange market in  
13 Arizona. As stated earlier in this testimony, both companies were experiencing poor  
14 wholesale service from Qwest. These companies had relatively large volumes of orders  
15 and enough experience with Qwest to be able to provide invaluable information to  
16 regulatory agencies reviewing whether Qwest should receive Section 271 approval. This  
17 information could have been detrimental to Qwest, in that it could have impacted when  
18 and even whether Qwest received Section 271 approval. **[BEGIN CONFIDENTIAL]**  
19 **[END CONFIDENTIAL]**

20  
21 The agreements between Qwest, Eschelon, and McLeod are especially troubling. Based  
22 on Staff's analysis, Qwest intentionally and willfully chose not to file these agreements,  
23 and adversely impact the development of local competition in Arizona, in order to achieve  
24 its goal of Section 271 approval. Also troubling are non-participation clauses in Qwest's  
25 agreements with CLECs. The decision to add non-participation clauses to agreements that  
26 Qwest executed with CLECs was an intentional and willful decision by Qwest. These

1 clauses demonstrate that Qwest was not willing to abide by the 1996 Act or by the  
2 regulatory processes of the Commission, which enable companies to bring matters to the  
3 Commission in the first instance for resolution. Staff has determined that with regard to  
4 the Eschelon and McLeod agreements and the non-participation clauses contained in the  
5 unfiled agreements, Qwest's actions were intentional, willful, and contrary to Commission  
6 rules and processes. Qwest also appears to have acted in intentional and willful violation  
7 of federal law with regard to the Eschelon and McLeod agreements and the non-  
8 participation clauses contained in the unfiled agreements. The signal must be sent that  
9 Qwest's actions are highly egregious and unacceptable, and the negative impact of those  
10 actions must be remedied.

11  
12 The answer to why Qwest did not file the other agreements in Table 1 is more varied. In  
13 some instances arguments can be made that Qwest honestly believed that certain  
14 agreements did not require filing. Staff believes that the recent FCC Order on Qwest's  
15 Declaratory Ruling demonstrates that the filing standard is clearly derived directly from  
16 the 1996 Act. However, Staff recognizes that not only Qwest, but other parties did not  
17 uniformly interpret the 1996 Act. Staff, in its own review, could understand how one  
18 agreement could be seen to both fall, and not fall, under the filing standard articulated by  
19 the 1996 Act and clarified by the FCC. Therefore, Staff is unable to irrefutably conclude  
20 that Qwest's not filing of these other agreements was intentional and willful.

21  
22 **Q. Please explain why Staff's initial Report stated that Qwest acted in good faith in not**  
23 **filing the agreements with the Commission.**

24 **A.** Staff's findings in its initial Report were based upon a very limited record, without the  
25 participation of both Eschelon and McLeod. Once Staff obtained additional information

1 through discovery and requests for additional comment, many more facts came to light,  
2 particularly with regard to the Eschelon and McLeod agreements.

3  
4 **Q. Has Qwest changed its conduct?**

5 **A.** Qwest states in its Direct Testimony that it has implemented some changes in its internal  
6 interconnection agreement processes. Qwest states that in May 2002 it began a new  
7 policy of filing all contracts that contain provisions which relate to Section 251(b) and (c)  
8 and that are forward looking. Qwest formed an internal committee of personnel to review  
9 all contracts and decide whether they meet the requirements of the above policy. If a  
10 contract does contain ongoing provisions which relate to Section 251(b) or (c), then those  
11 terms will be added to an interconnection amendment and will be filed for Commission  
12 approval.

13  
14 **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (Please see attachment Exhibit  
15 S-65.)

16  
17 The new process that Qwest refers to in its Direct Testimony is not new for agreements  
18 which Qwest had considered to be interconnection agreements. It seems to be a new  
19 process for agreements which Qwest had not considered to be interconnection agreements,  
20 such as settlement agreements. However, all the personnel and processes are in place and  
21 have been in place to conduct the thorough internal review to which Qwest refers prior to  
22 May 2002. The fact that Qwest points to an internal process that should have been in  
23 place since the inception of the 1996 Act as the primary example of its desire to comply  
24 with Section 252(e) does not demonstrate any true change in its conduct.

25

1 Qwest states that some unfiled agreements which it identified as forward looking and  
2 relating to Section 251(b) and (c) were filed in September 2002. It seems that the internal  
3 process initiated in May 2002 should have caught these agreements prior to September  
4 2002. However, Qwest states that its internal committee did not review the unfiled  
5 agreements that are the subject of this proceeding. (Please see attachment Exhibit S-66.)  
6 It appears that Qwest waited to see what unfiled agreements Staff would recommend be  
7 filed in its Supplemental Report issued August 14, 2002, before reviewing those  
8 agreements. This issue aside, Qwest should have actually filed these agreements within  
9 30 days of their execution. Of the 14 agreements Qwest filed in September 2002, which  
10 pertained to Arizona, 3 were executed over 2 years prior to September 2002. Four of the  
11 agreements which were filed in September 2002 were executed over 1 year prior to  
12 September 2002.

13  
14 Qwest also posted these 14 agreements on its wholesale website after it filed them for  
15 Commission approval, but prior to the agreements being approved. Qwest was not  
16 required to post these agreements on its website. This action could be seen as an example  
17 of Qwest trying to remedy its past misconduct. However, Qwest has not committed to  
18 posting other unfiled agreements, or interconnection agreements in general, on its website  
19 after it files them for Commission approval.

20  
21 Qwest states that it has agreed to hire an independent consultant to monitor its compliance  
22 with Section 252. The agreement to a monitor is significant, and Staff believes that this  
23 may provide an incentive for Qwest to change its conduct.

24  
25 Qwest states that two members of Qwest's senior management who were involved in the  
26 negotiations of some of the unfiled agreements are no longer Qwest employees. This

1 change in senior management will hopefully bring about changes in Qwest's conduct with  
2 its competitors. However, the fact that these Qwest employees were no longer with  
3 Qwest made obtaining information regarding their knowledge of the Eschelon and  
4 McLeod negotiations and unfiled agreements more difficult once they had left. Also,  
5 these two members of senior management were not the only Qwest employees involved in  
6 the Eschelon and McLeod negotiations. Others who were involved in the negotiations or  
7 the relationship between Eschelon and McLeod are still employed by Qwest.

8  
9 Qwest states that it terminated certain controversial Eschelon and McLeod agreements in  
10 order to address the concerns of other parties that the agreements were discriminatory and  
11 as a remedial measure. **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**  
12 However, there are also other reasons why Staff believes Qwest terminated these  
13 agreements. **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** Also, it must be  
14 noted that Qwest maintained during this proceeding that any terminated agreements did  
15 not need to be filed for Commission approval. Staff believes that this position may have  
16 played a part in Qwest's decision to terminate these Eschelon and McLeod agreements.  
17 **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

18  
19 Some of Qwest's conduct during the Commission's investigation into Qwest's compliance  
20 with Section 252(e) also brings into question the idea that Qwest's conduct has changed.  
21 One example is the use of bracketing in Qwest's September 2002 filings of previously  
22 unfiled agreements. When Qwest made these filings, it bracketed portions of the  
23 agreements it believed the Commission had the authority to review and approve. Qwest  
24 attached its commentary on the Commission's authority under Section 252(e) to each of  
25 these filings. (Please see attachment Exhibit S-67.) Clearly Qwest was trying to limit the  
26 role of the Commission in its review of these agreements. Qwest used the

1 recommendation of Staff to file, in their entirety, certain unfiled agreements as an  
2 opportunity to tell the Commission what it had the authority to do.

3  
4 Another example is the difficulty Staff encountered in obtaining information on which  
5 unfiled agreements were canceled, terminated, superseded, or had expired. Staff was  
6 required to ask this question of all of the unfiled agreements in two separate data requests,  
7 and in one email, before it obtained satisfactory answers for most of the unfiled  
8 agreements. Even then, Qwest's response was unsatisfactory for a few agreements and  
9 required further questions by Staff of Qwest. (Please see attachment Exhibit S-68.)

10  
11 **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**

12  
13 Qwest has not yet provided the Commission with adequate assurances that its conduct as  
14 investigated in this proceeding will not occur again.

15  
16 **PENALTIES**

17 **Q. Please discuss the specific federal laws and Arizona Administrative Code which**  
18 **Qwest violated.**

19 **A.** Qwest appears to have violated Section 252(e) of the 1996 Act by not filing the  
20 interconnection agreements listed in Table 1. Qwest violated A.A.C. R14-2-1112 which  
21 states that local exchange carriers ("LECs") must provide non-discriminatory  
22 interconnection arrangements. While this rule is located under the 1100 series of rules  
23 titled "Competitive Telecommunications Services", this rule does apply to Qwest as the  
24 incumbent local exchange carrier ("ILEC") that is required to provide interconnection  
25 services to its competitors. Qwest violated A.A.C. R14-2-1307 which states that ILECs  
26 shall make essential facilities and services, such as UNEs, available to competitors

1           pursuant to negotiated agreements that must be filed with the Commission. Qwest  
2           violated A.A.C. R14-2-1308 which states that ILECs shall provide interim local number  
3           portability to competitors pursuant to negotiated agreements that must be filed with the  
4           Commission. Qwest violated A.A.C. R14-2-1506 which states that interconnection  
5           agreements must be filed for Commission approval under Section 252(e) within 30  
6           calendar days of the execution date of an agreement. Qwest violated A.A.C. R14-2-1508  
7           which states that amendments to interconnection agreements must be filed for  
8           Commission approval.

9  
10       **Q.    Should Qwest be subject to penalties based on its actions?**

11       **A.    Yes.** Staff recommends a series of monetary and non-monetary penalties based on  
12       Qwest's actions as revealed in the investigation in this docket. Both types of penalties  
13       will focus on preventing a repetition of Qwest's anti-competitive behavior. Staff will first  
14       discuss monetary penalty options. These penalties will focus on changing Qwest's anti-  
15       competitive behavior and actions. Next, Staff will discuss a variety of non-monetary  
16       penalties. Even though these penalties are deemed to be "non-monetary" in nature, they  
17       require specific actions which may result in increased costs or lost revenue to Qwest.  
18       These penalties will help ameliorate the anti-competitive outcome of the unfiled  
19       agreements and remedy the adverse impact on the emergence of local competition in  
20       Arizona from the existence of the unfiled agreements. Those companies that were unable  
21       to opt-in to the unfiled agreements will be able to benefit directly from these non-  
22       monetary penalties. Staff's discussions of the possible monetary and non-monetary  
23       penalty options available to the Commission are designed to give the Commission  
24       flexibility in its choice of penalties.

1 **Q. Please describe the monetary penalty options available to the Commission.**

2 **A.** The Commission has a variety of monetary penalty options available. There are three  
3 main issues to consider when deciding the amount of monetary penalties to assess upon  
4 Qwest. First, under A.R.S. 40-425, the Commission can assess a base fine of up to \$5000  
5 per agreement. However, under A.R.S. Section 40-424 the Commission has the authority  
6 to assess additional fines of up to \$5000 per day per agreement if it is determined that a  
7 company is in contempt of the Commission's orders, rules, or requirements. A.R.S. 40-  
8 424 states that the penalties assessed thereunder are cumulative. The Commission could  
9 also assess a flat penalty amount within the range of penalties otherwise derived under  
10 these statutory provisions. Second, the Commission may choose the agreements for which  
11 it will assess monetary penalties. For example, the Commission could choose to assess a  
12 fine on each agreement in Table 1. Or the Commission could assess a fine on only the  
13 Eschelon and McLeod agreements since Staff believes that Qwest intentionally and  
14 willfully chose not to file these agreements. Another alternative is to only assess a fine on  
15 the agreements which contained non-participation clauses. Finally, the Commission could  
16 choose any combination of these methods in assessing monetary penalties. The monetary  
17 penalty which is chosen should be sufficient to deter Qwest from repeating the same (or  
18 similar) violations investigated in this docket in the future.

19  
20 **Q. Please describe the non-monetary penalty options available to the Commission.**

21 **A.** The Commission has a variety of non-monetary penalty options available. These options  
22 are listed below.

23 1. Filing of Terminated Agreements or Making Benefits Available

24 This option would require Qwest to file all of the agreements in Table 3 that were  
25 terminated, superseded, or had expired, in addition to all of the agreements in  
26 Table 1 that are still in effect. While the agreements in Table 3 have terminated,

1 the Commission could require Qwest to file these agreements so that other carriers  
2 can opt-in to the benefits contained in these agreements as one of the penalties it  
3 assesses on Qwest. Since Qwest was required to file the agreements in Table 3  
4 with the Commission for approval, the fact that they were terminated should not  
5 relieve Qwest of its obligation under Section 252(e). Once these agreements are  
6 approved, a specific length of time could be set during which all interested CLECs  
7 would have an opportunity to decide whether to opt-in to these agreements. After  
8 a CLEC has opted into one of these agreements, then the duration of the agreement  
9 could be the same length of time that the agreement was in effect for the CLEC  
10 who had entered into it initially or could be a set length of time determined by the  
11 Commission to be sufficient to enable a CLEC to obtain benefits from the  
12 agreement and to penalize Qwest for its behavior.

13  
14 If the Commission does not believe that requiring Qwest to file terminated  
15 agreements is appropriate, the Commission could, in the alternative, require Qwest  
16 to make the benefits of the terminated agreements available to all CLECs who did  
17 not initially receive those benefits at the same rates, terms, and conditions  
18 contained in the initial agreements.

19  
20 2. 10 percent Discount, Credit, or Cash Payment

21 One of the most important benefits provided to both Eschelon and McLeod was  
22 **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**. A possible non-  
23 monetary penalty would be to provide all CLECs with either the same or a similar  
24 discount that was available to Eschelon and McLeod. There are four issues to  
25 consider regarding this option. First, should the discount be applied to all  
26 purchases of Qwest services or on a subset of CLECs' purchases? Eschelon and

1 McLeod received [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. The  
2 discount could also be applied to just some of these services. Second, should the  
3 discount be applied on a going forward basis or should it be applied on past  
4 purchases in the form of a credit or cash payment? Eschelon and McLeod received  
5 [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. However, another  
6 option would be to apply the discount to a CLEC's past purchases of Qwest  
7 services and give the CLEC a credit on its bill for future Qwest purchases.  
8 Another option would be to give CLECs cash payments rather than credits, since  
9 credits would ensure that CLECs would receive a benefit only if they benefited  
10 Qwest by purchasing Qwest services. The third issue is the length of time for the  
11 discount arrangement to be applied to other CLECs. The length of the discount  
12 arrangement could be the same time for which the arrangement was in effect for  
13 Eschelon and McLeod. Or the length could be equal to the duration that the parties  
14 intended the discount to be in effect, from 3 to 5 years. The fourth issue is the  
15 amount of the discount. Eschelon received [BEGIN CONFIDENTIAL] [END  
16 CONFIDENTIAL] and McLeod had an agreement for [BEGIN  
17 CONFIDENTIAL] [END CONFIDENTIAL]. A discount of less than 10  
18 percent, 10 percent, or more than 10 percent could be implemented for other  
19 CLECs.

20  
21 3. Wholesale Service Quality Changes

22 If and when Qwest receives Section 271 approval, a Performance Assurance Plan  
23 ("PAP") will be used to monitor Qwest's service to its wholesale CLEC customers.  
24 The PAP contains a wide variety of measurements on which Qwest's performance  
25 will be judged. The PAP will provide monetary payments to CLECs if Qwest's  
26 service falls below certain standards.

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In Minnesota's proceeding on Qwest's unfiled agreements, Qwest proposed wholesale service quality standard modifications as part of a larger proposal addressing penalties for Qwest's behavior in Minnesota. One non-monetary penalty may be to modify the service standards for certain measurements under the PAP so that Qwest would be required to make additional monetary payments to CLECs if it does not comply with the wholesale service standards. This may provide an incentive to Qwest to provide better service to CLECs who depend on Qwest for wholesale services. If these CLECs receive better wholesale service, then their retail customers may be more satisfied with their service. More satisfied CLEC customers may result in an increase in local competition in Arizona. However, if service standards are modified, and Qwest's wholesale service does not improve, then CLECs will receive additional monetary payments from Qwest which may help these CLECs in their provisioning of telecommunications services to Arizona customers.

Another option, recommended by RUCO, would be to implement wholesale service quality measurements and standards that are separate from the PAP. RUCO recommends that monitoring of Qwest's performance and payments under this separate plan would commence prior to Qwest obtaining Section 271 approval. According to RUCO, this separate plan would terminate once the PAP was in effect. However, the Commission could also choose to develop a separate wholesale service quality plan that would remain in effect even after the PAP terminated.

4. Independent Monitor of Qwest's Section 252(e) compliance

1           This option would require Qwest to obtain and pay for an independent monitor of  
2           its compliance with Section 252(e). The independent monitor would review  
3           whether Qwest has filed and is filing all agreements with the Commission in  
4           accordance with federal and state law and the Arizona Administrative Code. The  
5           Commission would receive reports from the monitor on Qwest's compliance with  
6           Section 252(e). The monitor should be approved by the Commission. One issue  
7           to consider is the length of time during which Qwest's compliance would be  
8           monitored.

9  
10         5. Implement Code of Conduct to Govern Relationships With CLECs

11           Qwest currently has a Code of Conduct that applies to its employees' conduct with  
12           respect to fellow employees, Qwest's customers, Qwest's competitors, and  
13           government officials. One non-monetary penalty may be to have Qwest develop a  
14           Code of Conduct that it must use in its interactions with CLECs. Qwest's current  
15           Code of Conduct does cover this issue, but is not very detailed. The Code of  
16           Conduct could include prohibitions against the same (or similar) anti-competitive  
17           actions revealed in this investigation. Qwest would then submit the Code of  
18           Conduct for comment by all parties, including CLECs. The Commission would  
19           review the Code of Conduct, and make modifications to it based upon the  
20           comments submitted, prior to its approval.

21  
22         6. Broadband Deployment

23           RUCO recommended this non-monetary penalty in its Direct Testimony. The  
24           Commission could choose to mandate further broadband deployment by Qwest in  
25           Arizona.

26

1 Of course, there may be other possible non-monetary penalties besides those highlighted  
2 above. The Commission may choose whatever lawful non-monetary penalties it believes  
3 will deter Qwest from repeating the same (or similar) violations investigated in this docket  
4 in the future.

5  
6 **Q. Please describe the monetary penalties that Staff is recommending.**

7 **A.** Of the monetary penalty options previously discussed, Staff is recommending that Qwest  
8 be fined a flat amount of \$15 million under A.R.S. 40-424. This amount recognizes that  
9 with respect to the Eschelon and McLeod agreements, and the non-participation clauses in  
10 agreements listed in Table 9, Qwest's actions were intentional, willful, and contrary to  
11 Commission rules and processes.

12  
13 Staff recommends that under A.R.S. 40-425 Qwest be fined \$3000 per each of the  
14 agreements Qwest had with other carriers besides Eschelon and McLeod, which have not  
15 been filed. This amount recognizes that with respect to these agreements, Staff could not  
16 determine that Qwest's actions were intentional and willful. However, these agreements  
17 should have been filed by Qwest. Of the agreements in Table 1 that have not been filed,  
18 12 are with other carriers. Therefore, Qwest should be fined \$3000 for these 12  
19 agreements, for a fine of \$36,000.

20  
21 Staff also recommends that Qwest be fined \$1000 per each of the agreements with other  
22 carriers that Qwest filed in September 2002. This amount recognizes that with respect to  
23 these agreements, Staff could not determine that Qwest's actions were intentional and  
24 willful. Staff also notes that Qwest has filed these agreements, albeit not as soon as they  
25 should have. Of the 14 agreements that were filed in September 2002, 11 are with other

1 carriers. Therefore, Qwest should be fined \$1000 for these 11 agreements, for a fine of  
2 \$11,000.

3  
4 A \$15 million penalty plus an additional \$47,000 fine is within the range of fines that  
5 Qwest could be assessed under A.R.S. 40-424 and 40-425. This amount is greater than the  
6 base fine amount that the Commission has the authority to implement under A.R.S. 40-  
7 425. However, \$15,047,000 is lower than the maximum amount that the Commission is  
8 allowed to fine under A.R.S. 40-424. Staff is not recommending a higher monetary  
9 penalty since Staff would rather have Qwest spend resources on non-monetary penalties  
10 which will directly benefit CLECs and local competition in Arizona. Staff believes that a  
11 \$15,047,000 monetary penalty, coupled with the non-monetary penalties below, is  
12 sufficient to deter Qwest from its non-compliant behavior and will help ameliorate the  
13 adverse impact on the emergence of local competition in Arizona from the existence of the  
14 unfiled agreements.

15  
16 **Q. Please describe the non-monetary penalties that Staff is recommending.**

17 **A.** Of the above non-monetary penalty options, Staff is recommending the following  
18 penalties:

19 1. Filing of Terminated Agreements or Making Benefits Available

20 Staff recommends that Qwest file all of the agreements in Table 3 that were  
21 terminated, superseded, or had expired, in addition to all of the agreements in  
22 Table 1 that are still in effect. While the agreements in Table 3 have terminated,  
23 the Commission can require Qwest to file these agreements so that other carriers  
24 can opt-in to the benefits contained in these agreements as one of the penalties  
25 assessed on Qwest. Staff recommends that Qwest make these filings immediately,  
26 prior to a decision in this matter. Doing so would demonstrate that Qwest is

1 committed to complying with federal and state laws and rules related to  
2 interconnection agreements. In the alternative, Qwest should file these agreements  
3 within 10 days of a decision in this matter. Staff recommends an expedited  
4 process (i.e., less than 90 days) be used by the Commission in approving these  
5 agreements. Once these agreements are approved, Staff recommends that all  
6 interested CLECs should have an opportunity to decide whether to opt-in to these  
7 agreements for two years from the date of Commission approval of the  
8 agreements. However, CLECs that had initially entered into these terminated  
9 agreements should not be eligible to opt-in to them again under this process.

10  
11 Once a CLEC has opted in to one of these agreements, Staff recommends that  
12 Qwest must allow the agreement to be in effect for at least the same length of time  
13 that the agreement was in effect for the initial CLEC who entered into it. Since  
14 these agreements had varying durations, Staff does not recommend a specific  
15 duration, such as 12 months, be used for all of these agreements. Also, since a  
16 wide variety of issues were covered in these unfiled agreements, Staff cannot  
17 recommend that a specific minimum duration be used for all of these agreements at  
18 this time. The second part of this proceeding, Phase B, will address disagreements  
19 over opt-in rights of CLECs to the unfiled agreements that are ultimately approved  
20 by the Commission. Staff recommends that disagreements regarding the duration  
21 of these agreements for CLECs that want to opt-in to them be addressed in Phase  
22 B.

23  
24 If the Commission does not believe that requiring Qwest to file terminated  
25 agreements is appropriate, Staff recommends, in the alternative, that the  
26 Commission require Qwest to make the benefits of the terminated agreements

1 available to all CLECs who did not initially receive those benefits at the same  
2 rates, terms, and conditions contained in the initial agreements.

3  
4 2. 10 percent Cash Payment and Credit

5 Staff recommends that Qwest provide each CLEC (other than Eschelon or  
6 McLeod) with a cash payment totaling 10 percent of its purchases of Section  
7 251(b) or (c) services and 10 percent of its purchases of intrastate access from  
8 Qwest in Arizona during the time period from January 1, 2001, through June 30,  
9 2002. The purchases made from January 1, 2001, through June 30, 2002, which  
10 are eligible for the discount could have been made under interconnection  
11 agreements, SGATs, settlement agreements, or any other type of agreement  
12 between Qwest and a CLEC. As long as a CLEC received any of these services  
13 from Qwest during this time period, that CLEC should be eligible for the cash  
14 payment.

15  
16 Staff is recommending the above approach to the 10 percent discount issue for  
17 several reasons. First, a credit on past purchases is not desirable since much has  
18 changed in the telecommunications industry from January 1, 2001, until today. It  
19 is probable that some CLECs who purchased services from Qwest in 2001 or 2002  
20 are no longer in business or are operating with fewer customers than they once  
21 had. Only companies that are still in business, were in business at any time from  
22 January 1, 2001, until June 30, 2002, and purchased services from Qwest during  
23 that time period, and anticipate purchasing services from Qwest in the future  
24 would benefit from a credit. And if these companies have fewer customers than  
25 they once had, or have changed their business plans, the amount of the credit may  
26 far exceed what these companies would need to purchase from Qwest. Staff has

1           determined that a cash payment is the preferred method of providing the 10 percent  
2           discount to other CLECs for the time period of January 1, 2001, through June 30,  
3           2002. Qwest should also be required to make a good faith effort to contact CLECs  
4           that have gone out of business, but had purchased services from Qwest between  
5           January 1, 2001, and June 30, 2002, and are eligible for cash payments.

6  
7           Staff also recommends that Qwest provide each CLEC (except Eschelon and  
8           McLeod) with a credit totaling 10 percent of its purchases of Section 251(b) or (c)  
9           services and 10 percent of its purchases of intrastate access from Qwest in Arizona  
10          for eighteen months following the date of a decision in this matter. A 10 percent  
11          credit on future purchases is necessary for the following reason. A 10 percent  
12          credit on future purchases would enable CLECs who were not operating from  
13          January 1, 2001, through June 30, 2002, to receive a discount as well. It can be  
14          argued that these CLECs may have wanted to enter the Arizona market for local  
15          service during that time period, but were unable to do so due to high prices for  
16          wholesale services. Perhaps the discount would have enabled them to do business.  
17          By giving all carriers a 10 percent credit on a going forward basis for 18 months,  
18          CLECs who have not entered the Arizona market may now do so and increased  
19          local competition may result.

20  
21          3. Wholesale Service Quality Changes

22                 In Minnesota's proceeding on Qwest's unfiled agreements, Qwest proposed  
23                 wholesale service quality standard modifications for particular PIDs as part of a  
24                 larger proposal addressing penalties for Qwest's behavior in Minnesota. Based on  
25                 Qwest's proposal in Minnesota, Staff recommends that the standards for some of  
26                 these same measurements (known as Performance Indicator Definitions, or PIDs)

1 in Qwest's Arizona PAP be modified. Certain PIDs have parity standards which  
2 require that Qwest's service quality to its wholesale customers be no worse than  
3 Qwest's service quality to its own retail customers. Other PIDs have benchmark  
4 standards which require that Qwest's service to its wholesale customers be at or  
5 better than a certain benchmark. Table 10 contains Staff's recommendations  
6 regarding the modifications of certain PIDs. Staff is recommending that for certain  
7 PIDs, benchmark floors be implemented below which service should not  
8 deteriorate. However, these PIDs should retain their parity standards. For  
9 example, if Qwest's retail service quality for OP-3 (in the table below) was better  
10 than the 95 percent benchmark floor, then the parity standard would apply when  
11 evaluating these retail results to Qwest's wholesale results. However, if Qwest's  
12 retail service quality for OP-3 was less than the benchmark floor of 95 percent,  
13 then Qwest's wholesale results would be evaluated under the benchmark floor.  
14 Staff has reviewed Qwest's recent results under the PIDs in Table 10, and believes  
15 that Staff's recommendations would provide CLECs with additional monetary  
16 payments if Qwest does not improve the level of service that it provides its  
17 wholesale CLEC customers. Staff does not recommend any changes to the current  
18 definitions of these PIDs.

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**Table 10: PAP PID Modifications**

<b>PID</b>	<b>Current Standard</b>	<b>Recommended Standard</b>
OP-3 (Installation Commitments)	Parity	Parity with benchmark floor of 95%
OP-4(c) (Installation Intervals): Resale Business and Residential/UNE-P (POTS)	Parity	Parity with benchmark floor of 2 days
OP-4(c): UNE-P Centrex	Parity	Parity with benchmark floor of 5 days
OP-4(a) and (b): Resale Business and Residential/UNE-P (POTS)	Parity	Parity with benchmark floor of 5 days
OP-4(c): Line Sharing	Parity	Parity with benchmark floor of 3.2 days
OP-4(d) and (e): LIS Trunks	Parity	Parity with benchmark floor of 15 days
OP-4(d) and (e): UBL (UNE-L)	Parity	Parity with benchmark floor of 6 days
OP-5 (New Service Troubles)	Parity	Parity with benchmark floor of 90%
MR-3 (Timely Service Repairs)	Parity	Parity with benchmark floor of 95%
MR-5 (Timely Service Repairs)	Parity	Parity with benchmark floor of 95%
MR-7 (Repeat Troubles)	Parity	Parity with benchmark floor of 15%
NI-1 (Trunk Blocking Rates)	Parity	Parity with benchmark floor of 1%

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Staff does not recommend that a separate wholesale service quality plan be implemented for Qwest that is outside of the PAP and the Section 271 process. The PAP will be in effect once Section 271 approval is granted. While there may be a lag from the date of a decision in this docket and the effective date of the PAP, Staff does not believe that implementing a separate wholesale service quality plan in the interim would be a wise use of limited resources. The development of a separate plan would take time, and it is possible that by the time it is developed, the PAP would be in effect. Staff's recommendation to not adopt a separate wholesale service quality plan, however, is based upon Qwest's acceptance of Staff's proposed PID modifications set forth above.

1           4. Independent Monitor of Qwest's Section 252(e) compliance

2           Staff recommends that Qwest obtain and pay for an independent monitor to  
3           monitor Qwest's compliance with Section 252(e) in Arizona. The independent  
4           monitor would review whether Qwest has filed and is filing all agreements with  
5           the Commission in accordance with federal and state law and Arizona  
6           Administrative Code. The choice of a monitor would be approved by the  
7           Commission. The Commission would receive quarterly reports from the monitor  
8           on Qwest's compliance with Section 252(e), beginning with the first four months  
9           following the hiring of the monitor and approval of the monitor by the  
10          Commission. These reports should contain the following information: 1) a brief  
11          description of all of the agreements executed by Qwest in the last quarter  
12          (including, but not limited to, settlement agreements and take or pay agreements),  
13          and 2) a list of the agreements which were filed for Commission approval in the  
14          last quarter, which would include the date the agreement was executed and the date  
15          that the agreement was filed with the Commission. The brief description of all of  
16          the agreements should include, but not be limited to, the title, date, and parties  
17          involved for each agreement. These reports may be made to Staff on a confidential  
18          basis. Qwest should retain this independent monitor for at least two years. At the  
19          end of two years, the Commission would decide whether Qwest should continue to  
20          retain the monitor based on Qwest's compliance with Section 252(e).

21  
22          5. Implement Code of Conduct to Govern Relationships With CLECs

23          Staff recommends that Qwest develop a Code of Conduct that will govern its  
24          relationships with CLECs and include prohibitions against the same (or similar)  
25          anti-competitive actions revealed in this investigation. This Code of Conduct  
26          should include, at a minimum, 1) a statement that Qwest will comply with all

1 federal and state laws, Arizona Administrative Code, and other state rules related  
2 to interconnection agreements, 2) a prohibition against entering into non-  
3 participation clauses which preclude the parties to an agreement from bringing  
4 matters to the Commission in the first instance for resolution, and 3) a prohibition  
5 against terminating agreements only with the objective of eliminating Qwest's  
6 obligation to file these agreements for Commission approval. Qwest should  
7 submit this Code of Conduct to the Commission for comment by all parties within  
8 30 days of a decision in this matter. The Commission would review the Code of  
9 Conduct and make modifications to it based upon the comments submitted prior to  
10 its approval.

11  
12 Staff does not recommend any other non-monetary penalties. Increasing Qwest's  
13 broadband deployment in Arizona is not the focus of Staff's non-monetary penalty  
14 recommendations. The focus of this docket is on competition, rather than on  
15 infrastructure.

16  
17 In summary, Staff's recommended monetary and non-monetary penalties will result in a  
18 liability in excess of \$15 million for Qwest. When viewed as a whole, Staff believes that  
19 these penalties will be sufficient to deter Qwest from repeating the same (or similar)  
20 violations investigated in this docket in the future. The penalties are intended to help  
21 ameliorate the anti-competitive outcome of the unfiled agreements and to remedy the  
22 adverse impact on the emergence of local competition in Arizona. Staff believes that  
23 Qwest's behavior and actions, with respect to the Eschelon and McLeod agreements and  
24 the non-participation clauses, intentionally deceived the Commission, were designed to  
25 circumvent the regulatory process, and were so contrary to the public interest that the  
26 Commission is compelled to assess these penalties upon Qwest.

1 **Q. Does Staff have any additional recommendations?**

2 **A.** Yes. As stated earlier in this testimony, Staff recommends certain revisions to the Arizona  
3 Administrative Code ("A.A.C."). Specifically, the A.A.C. R14-2-1100, 1300, and 1500  
4 series should be clarified to include the specific definition of an interconnection agreement  
5 stated in this testimony.

6  
7 **Q. Does this conclude your testimony?**

8 **A.** Yes, it does.

# EXHIBIT S-1

1. Allegiance Coordinated Installation With No Testing Amendment with Qwest dated 1/7/02
2. AT&T Interim Amendment to the Interconnection Agreements with Qwest dated 6/22/01
3. McLeod Purchase Agreement with Qwest Communications Corp. and its subsidiaries ("Qwest") (McLeod buys from Qwest) dated 10/26/00
4. WorldCom Assignment and Amendment to the Interconnection Agreement with Qwest dated 5/21/02
5. XO Confidential Billing Settlement Agreement with QCC (Network Services) dated 12/31/01

# EXHIBIT S-2

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	
Petition for Declaratory Ruling on the Scope	)	WC Docket No. 02-89
of the Duty to File and Obtain Prior Approval	)	
of Negotiated Contractual Arrangements	)	
under Section 252(a)(1)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** October 2, 2002

**Released:** October 4, 2002

By the Commission:

**I. INTRODUCTION**

1. On April 23, 2002, Qwest Communications International Inc. (Qwest) filed a petition for a declaratory ruling on the scope of the mandatory filing requirement set forth in section 252(a)(1) of the Communications Act of 1934, as amended (the Act).<sup>1</sup> Specifically, Qwest seeks guidance about the types of negotiated contractual arrangements between incumbent local exchange carriers (LECs) and competitive LECs that should be subject to the filing requirements of this section.<sup>2</sup> For the reasons explained below, we grant in part and deny in part Qwest's petition.

<sup>1</sup> 47 U.S.C. § 252(a)(1). *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89 (filed April 23, 2002) (Qwest Petition).

<sup>2</sup> Qwest Petition at 3. The Commission requested and received comments on the Qwest Petition. See Pleading Cycle Established for Comments on Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1), WC Docket No. 02-89, *Public Notice*, DA 02-976 (rel. April 29, 2002). The following parties submitted comments: AT&T Corp. (AT&T); Office of the Attorney General of the State of New Mexico and the Iowa Office of Consumer Advocate; Focal Communications Corporation and Pac-West Telecomm, Inc.; Iowa Utilities Board; Minnesota Department of Commerce; Mpower Communications Corp. (Mpower); New Edge Network, Inc.; PageData; Sprint Corporation (Sprint); Touch America, Inc. (Touch America); and WorldCom, Inc. (WorldCom). The following parties filed reply comments: Association of Communications Enterprises; Association for Local Telecommunications Services (ALTS); PageData; Qwest; Sprint; Verizon; VoiceStream Wireless Corporation; and WorldCom.

## II. BACKGROUND

### 2. Section 252(a)(1) of the Act states:

Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement . . . shall be submitted to the State commission under subsection (e) of this section.<sup>3</sup>

Qwest argues that this section can most logically be read to mean that the mandatory filing and state commission approval process should apply only to the "rates and associated service descriptions for interconnection, services and network elements."<sup>4</sup> More precisely, Qwest contends that a negotiated agreement should be filed for state commission approval if it includes: (i) a description of the service or network element being offered; (ii) the various options available to the requesting carrier (*e.g.*, loop capacities) and any binding contractual commitments regarding the quality or performance of the service or network element; and (iii) the rate structures and rate levels associated with each such option (*e.g.*, recurring and non-recurring charges, volume or term commitments).<sup>5</sup>

3. According to Qwest, the following categories of incumbent LEC-competitive LEC arrangements should not be subject to section 252(a)(1): (i) agreements defining business relationships and business-to-business administrative procedures (*e.g.*, escalation clauses, dispute resolution provisions, arrangements regarding the mechanics of provisioning and billing, arrangements for contacts between the parties, and non-binding service quality or performance standards);<sup>6</sup> (ii) settlement agreements;<sup>7</sup> and (iii) agreements regarding matters not subject to sections 251 or 252 (*e.g.*, interstate access services, local retail services, intrastate long distance, and network elements that have been removed from the national list of elements subject to

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<sup>3</sup> 47 U.S.C. § 252(a)(1).

<sup>4</sup> Qwest Petition at 10. Qwest contends that its interpretation of section 252(a)(1) is supported by the legislative history of the Telecommunications Act of 1996. *Id.* at 13-14.

<sup>5</sup> Qwest Petition at 29. Qwest also indicates that a description of basic operations support systems functionalities and options to which the parties have agreed should be filed and subjected to state commission approval. *Id.* at 29-30.

<sup>6</sup> Qwest Petition at 31-34.

<sup>7</sup> Qwest Petition at 34-36.

mandatory unbundling).<sup>8</sup>

4. Qwest states that a Commission ruling on this issue will eliminate the prospect of multiple, inconsistent rulings by state commissions and federal courts.<sup>9</sup> Qwest argues that a national policy concerning what must be filed under section 252(a)(1) is necessary to promote local competition, facilitate multi-state negotiations,<sup>10</sup> and prevent overbroad interpretations of this filing requirement.<sup>11</sup> According to Qwest, an overbroad interpretation would reduce the incentives of incumbents and competitive LECs to implement bilateral arrangements that could benefit both parties. For example, Qwest states that the public disclosure of contractual provisions such as settlements of past disputes might discourage the parties from entering into such arrangements.<sup>12</sup> Qwest also contends that an overbroad reading of section 252(a)(1) creates legal uncertainty with respect to the validity of agreements that have not gone through the prior state commission approval process.<sup>13</sup>

5. Most commenters oppose Qwest's petition,<sup>14</sup> arguing that it is unnecessary and that Qwest's proposal interprets too narrowly which agreements must be filed under section 252(a)(1).<sup>15</sup> For example, several commenters argue that service quality and performance standards relate to interconnection and are therefore appropriately included in interconnection agreements.<sup>16</sup> Commenters also contend that competitive LECs need dispute resolution, billing and provisioning provisions in their interconnection agreements.<sup>17</sup> The commenters also disagree with Qwest's view that only certain portions of agreements (related to section 251(b) or (c)) need to be filed for state commission approval and argue instead that the entire agreement

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<sup>8</sup> Qwest Petition at 36-37.

<sup>9</sup> Qwest Petition at 5.

<sup>10</sup> Qwest Petition at 27.

<sup>11</sup> Qwest Petition at 22.

<sup>12</sup> Qwest Petition at 22.

<sup>13</sup> Qwest Petition at 17-18, 23.

<sup>14</sup> We note that Verizon filed comments to respond to, in its view, inaccurate statements made by certain commenters. *See* Verizon Reply at 1, 2-3.

<sup>15</sup> *See, e.g.*, AT&T Comments at 16-18; Minnesota Department of Commerce Comments at 32-34; WorldCom Comments at 7; ALTS Reply at 4.

<sup>16</sup> WorldCom Comments at 7; ALTS Reply at 4.

<sup>17</sup> WorldCom Comments at 7; ALTS Reply at 4. Verizon, however, argues that agreements for unregulated services such as billing and collection are not interconnection agreements that must be filed under section 252. Verizon Reply at 2.

must be filed for state commission review and approval.<sup>18</sup>

6. The commenters dispute Qwest's assertions concerning the burden of "overfiling" agreements for state commission approval<sup>19</sup> and disagree with Qwest's interpretation of the legal status of agreements not filed under section 252 or not yet approved by state commissions under the same section.<sup>20</sup> Specifically, these commenters contend that nothing in section 252, or any other provision of the Act, provides that the parties are prohibited from abiding by the agreement's terms until a state commission completes its review of the negotiated agreement.<sup>21</sup> Moreover, according to AT&T, not only does the 90-day approval process not present any legal impediment to parties that would like to begin operating under the terms of a negotiated agreement prior to state commission approval, there is no practical impediment (*e.g.*, compliance jeopardy) because interconnection agreements are rarely rejected.<sup>22</sup>

### III. DISCUSSION

7. We grant in part and deny in part Qwest's petition for a declaratory ruling. In issuing this decision, however, we believe that the state commissions should be responsible for applying, in the first instance, the statutory interpretation we set forth today to the terms and conditions of specific agreements. Indeed, we believe this is consistent with the structure of section 252, which vests in the states the authority to conduct fact-intensive determinations relating to interconnection agreements.<sup>23</sup>

8. We begin our analysis with the statutory language. Section 252(a)(1) provides that the binding agreement between the incumbent LEC and the requesting competitive LEC must include a "detailed schedule of itemized charges for interconnection and each service or network element included in the agreement."<sup>24</sup> In addition, section 251(c)(1) requires incumbent LECs to negotiate in good faith, in accordance with section 252, the particular terms and conditions of agreements to implement their duties set forth in sections 251(b) and (c).<sup>25</sup> Based on these

<sup>18</sup> AT&T Comments at 4, 6-9; Mpower Comments at 7; Sprint Comments at 3; WorldCom Comments at 6; ALTS Reply at 2.

<sup>19</sup> *See, e.g.*, AT&T Comments at 13; Sprint Comments at 3.

<sup>20</sup> AT&T Comments at 12; Minnesota Department of Commerce Comments at 38.

<sup>21</sup> AT&T Comments at 12; Minnesota Department of Commerce Comments at 38.

<sup>22</sup> AT&T Comments at 12-13, citing Qwest Petition at 9.

<sup>23</sup> As an example of the substantial implementation role given to the states, throughout the arbitration provisions of section 252, Congress committed to the states the fact-intensive determinations that are necessary to implement contested interconnection agreements. *See, e.g.*, 47 U.S.C. § 252(e)(5) (directing the Commission to preempt a state commission's jurisdiction only if that state commission fails to act to carry out its responsibility under section 252).

<sup>24</sup> 47 U.S.C. § 252(a)(1).

<sup>25</sup> 47 U.S.C. § 251(c)(1).

statutory provisions, we find that an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).<sup>26</sup> This interpretation, which directly flows from the language of the Act, is consistent with the pro-competitive, deregulatory framework set forth in the Act. This standard recognizes the statutory balance between the rights of competitive LECs to obtain interconnection terms pursuant to section 252(i) and removing unnecessary regulatory impediments to commercial relations between incumbent and competitive LECs. We therefore disagree with Qwest that the content of interconnection agreements should be limited to the schedule of itemized charges and associated descriptions of the services to which the charges apply. Considering the many and complicated terms of interconnection typically established between an incumbent and competitive LEC, we do not believe that section 252(a)(1) can be given the cramped reading that Qwest proposes. Indeed, on its face, section 252(a)(1) does not further limit the types of agreements that carriers must submit to state commissions.

9. We are not persuaded by Qwest that dispute resolution and escalation provisions are *per se* outside the scope of section 252(a)(1).<sup>27</sup> Unless this information is generally available to carriers (*e.g.*, made available on an incumbent LEC's wholesale web site), we find that agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements. The purpose of such clauses is to quickly and effectively resolve disputes regarding section 251(b) and (c) obligations. The means of doing so must be offered and provided on a nondiscriminatory basis if Congress' requirement that incumbent LECs behave in a nondiscriminatory manner is to have any meaning.<sup>28</sup>

10. Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an "interconnection agreement" and, if so, whether it should be approved or rejected. Should competition-affecting inconsistencies in state decisions arise, those could be brought to our attention through, for example, petitions for declaratory ruling. The statute expressly contemplates that the section 252 filing process will occur with the states,

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<sup>26</sup> We therefore disagree with the parties that advocate the filing of *all* agreements between an incumbent LEC and a requesting carrier. See Office of the New Mexico Attorney General and the Iowa Office of Consumer Advocate Comments at 5. Instead, we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1). Similarly, we decline Touch America's suggestion to require Qwest to file with us, under section 211, all agreements with competitive LECs entered into as "settlements of disputes" and publish those terms as "generally available" terms for all competitive LECs. Touch America Comments at 10, citing 47 U.S.C. § 211.

<sup>27</sup> Qwest Petition at 31-33.

<sup>28</sup> We note that Qwest has filed for state commission approval agreements containing both dispute resolution provisions and escalation clauses. See, *e.g.*, Qwest Supplemental Reply, WC Docket No. 02-148, at 26-27 (filed Aug. 30, 2002). We incorporate by reference this document into the record in the instant proceeding.

and we are reluctant to interfere with their processes in this area. Therefore, we decline to establish an exhaustive, all-encompassing "interconnection agreement" standard. The guidance we articulate today flows directly from the statute and serves to define the basic class of agreements that should be filed. We encourage state commissions to take action to provide further clarity to incumbent LECs and requesting carriers concerning which agreements should be filed for their approval. At the same time, nothing in this declaratory ruling precludes state enforcement action relating to these issues.<sup>29</sup>

11. Consistent with our view that the states should determine in the first instance which sorts of agreements fall within the scope of the statutory standard, we decline to address all the possible hypothetical situations presented in the record before us. We are aware, however, of some disagreement concerning interconnection agreement issues raised recently in another proceeding previously before the Commission.<sup>30</sup> Consequently, we determine that additional, specific guidance on these issues would be helpful.

12. The first matter concerns which settlement agreements, if any, must be filed under section 252(a)(1). We disagree with the blanket statement made by Qwest in its petition that "[s]ettlement agreements that resolve disputes between ILECs and CLECs over billing or other matters are not interconnection agreements under Section 252."<sup>31</sup> Instead, and consistent with the guidance provided above, we find that a settlement agreement that contains an ongoing obligation relating to section 251(b) or (c) must be filed under section 252(a)(1). Merely inserting the term "settlement agreement" in a document does not excuse carriers of their filing obligation under section 252(a) or prevent a state commission from approving or rejecting the agreement as an interconnection agreement under section 252(e). However, we also agree with Qwest that those settlement agreements that simply provide for "backward-looking consideration" (e.g., the settlement of a dispute in consideration for a cash payment or the cancellation of an unpaid bill) need not be filed.<sup>32</sup> That is, settlement contracts that do not affect

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<sup>29</sup> This statement also applies to any state enforcement action involving previously unfiled interconnection agreements including those that are no longer in effect.

<sup>30</sup> *Application by Qwest Communications International Inc., Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC 02-148 (filed June 13, 2002). See also Letter from Peter A. Rohrbach, Counsel for Qwest, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189 (filed Sept. 10, 2002) (withdrawing Qwest's joint applications filed in both dockets); *Application by Qwest Communications International Inc., Consolidated Application for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC Docket No. 02-148, *Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Montana, Utah, Washington and Wyoming*, WC Docket No. 02-189, Order, DA 02-2230 (rel. Sept. 10, 2002) (terminating both Qwest section 271 dockets).

<sup>31</sup> Qwest Petition at 34.

<sup>32</sup> Qwest Reply at 25-26. See also Minnesota Department of Commerce Comments at 6-7 (stating that it did not include in its complaint against Qwest filed with the Minnesota Public Utilities Commission "settlement agreements of what appear to be legitimate billing disputes").

an incumbent LEC's ongoing obligations relating to section 251 need not be filed.

13. Qwest has also argued, in another proceeding, that order and contract forms used by competitive LECs to request service do not need to be filed for state commission approval because such forms only memorialize the order of a specific service, the terms and conditions of which are set forth in a filed interconnection agreement.<sup>33</sup> We agree with Qwest that forms completed by carriers to obtain service pursuant to terms and conditions set forth in an interconnection agreement do not constitute either an amendment to that interconnection agreement or a new interconnection agreement that must be filed under section 252(a)(1).

14. Further, we agree with Qwest that agreements with bankrupt competitors that are entered into at the direction of a bankruptcy court or trustee and do not otherwise change the terms and conditions of the underlying interconnection agreement are not interconnection agreements or amendments to interconnection agreements that must be filed under section 252(a)(1) for state commission approval.<sup>34</sup> We are unaware of any carrier submitting such agreements for state commission approval under section 252. Directing carriers to do so has the potential to raise difficult jurisdictional issues between the bankruptcy court and regulators and could entangle carriers in inconsistent and, possibly, conflicting requirements imposed by state commissions, bankruptcy courts, and this Commission.

#### IV. ORDERING CLAUSE

15. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 251, 252 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251, 252, and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that Qwest's Petition for Declaratory Ruling IS GRANTED IN PART and IS DENIED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>33</sup> Letter from Peter A. Rohrbach, Counsel for Qwest, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189, at 2-3 (filed Sept. 5, 2002). We incorporate by reference this letter into the record in the instant proceeding. *See also* Minnesota Department of Commerce Comments at 7 (stating that it also did not include in its complaint "day-to-day operational agreements that implement specific provisions of interconnection agreements" such as collocation agreements and applications for access to poles, ducts, conduits, and rights of way).

<sup>34</sup> Qwest Supplemental Reply, WC Docket No. 02-148, at 19-20 n.29 (filed Aug. 30, 2002).

# EXHIBIT S-3

**INTERNETWORK CALLING NAME DELIVERY SERVICE AGREEMENT****("ICNAM SERVICE")**

This Agreement is entered into between U S WEST Communications, Inc., a Colorado corporation (hereinafter referred to as "USWC"), and Allegiance Telecom of Arizona, Inc. ("ALLEGIANCE"). The service(s) described in this Agreement shall be performed in the State(s) of Arizona.

**WHEREAS**, USWC provides intrastate, basic local exchange telephone services such as Internetwork Calling Name Delivery Service (hereinafter "ICNAM" service), to subscribers in the following states: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming; and

**WHEREAS**, ALLEGIANCE desires to purchase USWC's ICNAM service, and USWC wishes to provide ICNAM service to ALLEGIANCE, under terms and conditions prescribed in this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, USWC and ALLEGIANCE agree as follows:

**SECTION 1. DEFINITIONS**

- A. Subscribers mean end users of ALLEGIANCE's telecommunications services who wish to have callers identified prior to answering calls.
- B. A-Links mean a diverse pair of facilities connecting local end office switching centers with USWC Signaling Transfer Points (STPs).
- C. ICNAM service is a USWC service that allows ALLEGIANCE to query USWC's ICNAM database and secure the listed name information for the requested telephone number (calling number), in order to deliver that information to ALLEGIANCE's subscribers.
- D. ICNAM database is the USWC database which contains current listed name data by working telephone number served or administered by USWC, including listed name data provided by other local exchange carriers participating in the Calling Name Delivery Service arrangement.
- E. Service Control Point (SCP) is a control point in an SS7 network.
- F. Service Point (SP) is an SS7 network interface element capable of initiating and/or terminating SS7 Messages. SPs may be end offices, access tandem switches, operator service systems, database managers, or other SPs.
- G. Service Switching Point (SSP) is the software capability within an SP, and the SSP provides the SP with the SS7 message preparation/interpretation capability, plus SS7 transmission/reception access ability.

- H. Signaling Transfer Point (STP) is the point where ALLEGIANCE interconnects with USWC's SS7 network. In order to connect to USWC's SS7 network, ALLEGIANCE or other third party initiating ALLEGIANCE's ICNAM queries must connect with a USWC STP in order to connect to USWC's SCP.

## SECTION 2. DESCRIPTION

- A. Under this Agreement, in response to proper signaling queries, USWC will provide ALLEGIANCE with ICNAM database subscriber information if the calling party's subscriber information is stored in the USWC ICNAM database. The effect being that the called party subscriber can identify the calling party listed name prior to receiving the call, except in those cases where the calling party subscriber has its ICNAM information blocked.
- B. During the term of this Agreement, USWC will allow ALLEGIANCE to query USWC's ICNAM database in order to obtain ICNAM information which identifies the calling party subscriber.
- C. The ICNAM service provided under this Agreement shall include the database dip and transport from USWC's regional STP to USWC's SCP where the database is located. Transport from ALLEGIANCE's network to USWC's local STP is provided via A-Links which are described and priced in the Interconnection Agreement between ALLEGIANCE and USWC. Transport from USWC's local STP to USWC's regional STP is not included as a part of this Agreement, nor in the pricing for the ICNAM service provided under this Agreement. In the event that transport from USWC's local STP to USWC's regional STP is added to the ICNAM pricing provided hereunder, USWC will provide sixty (60) days prior written notice of any resulting change in the pricing for the ICNAM service.

## SECTION 3. TERM OF AGREEMENT

This Agreement arises out of an Interconnection Agreement between the Parties which was approved by the Corporation Commission in the state of Arizona. This Agreement shall become effective upon the latest signature date, and shall terminate at the same time as the said Interconnection Agreement. Provided, however, either Party may terminate this Agreement upon thirty (30) days prior written notice to the other.

## SECTION 4. RESPONSIBILITIES OF THE PARTIES

- A. Upon queries by ALLEGIANCE's end users, USWC will provide ICNAM information attached hereto as Exhibit A.
- B. USWC will provide information that is currently in its ICNAM Database accessed by ALLEGIANCE.
- C. ALLEGIANCE warrants that it shall send queries conforming to the American National Standards Institute's (ANSI) approved standards for SS7 protocol and per specification standard documents identified in Exhibit B. ALLEGIANCE acknowledges that transmission in said protocol is necessary

for USWC to provision its ICNAM services. ALLEGIANCE will adhere to other applicable standards, which include Bellcore specifications defining service applications, message types and formats. USWC reserves the right to modify its network pursuant to other specification standards that may become necessary to meet the prevailing demands within the United States telecommunications industry. All such changes shall be announced in advance and coordinated with ALLEGIANCE.

- D. All queries to USWC's ICNAM database shall use a subsystem number (the designation of application) value of 250 with a translation type value of 5. ALLEGIANCE acknowledges that such subsystem number and translation type values are necessary for USWC to properly process queries to USWC's ICNAM database.
- E. ALLEGIANCE acknowledges and agrees that SS7 network overload due to extraordinary volumes of queries and/or other SS7 network messages can and will have a detrimental effect on the performance of USWC's SS7 network. ALLEGIANCE further agrees that USWC, in its sole discretion, shall employ certain automatic and/or manual overload controls within USWC SS7 network to safeguard against any detrimental effects. USWC shall report to ALLEGIANCE any instances where overload controls are invoked due to ALLEGIANCE's SS7 network, and ALLEGIANCE agrees in such cases to take immediate corrective actions as necessary to cure the conditions causing the overload situation.
- F. ALLEGIANCE agrees to comply, at its own expense, with the provision of all state, local and federal laws, regulations, ordinances, requirements and codes which are applicable to the performance of the services hereunder which include the satisfaction of all tax and other governmentally imposed responsibilities as a Local Exchange Carrier customer, including but not limited to, payment of federal, state, or local sales use, excise, or other taxes or tax-like fees, imposed on or with respect to USWC's Caller Name Services and ALLEGIANCE's subscriber services (hereinafter referred to as "Tax(es)", including Taxes imposed directly on USWC and relating to ALLEGIANCE's (or ALLEGIANCE's subscriber) services. ALLEGIANCE shall, where permissible by law, file returns or reports relating to such Taxes, and pay or remit all such Taxes and other items to the appropriate taxing authority.
- G. USWC shall exercise best efforts to provide ALLEGIANCE accurate and complete ICNAM information. USWC does not warrant or guarantee the correctness or the completeness of such information; however, USWC will access the same ICNAM database for ALLEGIANCE's queries as USWC accesses for its own queries. In no event shall USWC have any liability for system outage or inaccessibility or for losses arising from the authorized use of the ICNAM data by ALLEGIANCE.
- H. ALLEGIANCE must arrange its Calling Party Number based services in such a manner that when a calling party requests privacy, ALLEGIANCE will not reveal that caller's name or number to the called party (ALLEGIANCE's end user). ALLEGIANCE will comply with all Federal Communications Commission guidelines and, if applicable, the appropriate state Commission rules, with regard to honoring the privacy indicator. ALLEGIANCE agrees to indemnify and hold

USWC harmless for any claims by third parties resulting from ALLEGIANCE's failure to comply with this provision.

#### **SECTION 5. OWNERSHIP OF ICNAM INFORMATION**

USWC retains full and complete ownership and control over the ICNAM database and all information in its database. ALLEGIANCE agrees not to copy, store, maintain or create any table or database of any kind from any response received after initiating an ICNAM query to USWC's database.

#### **SECTION 6. PROVISION OF ICNAM SERVICES**

- A. USWC services shall be provided in accordance with the terms and conditions of this Agreement.
- B. If at any time during the term of this Agreement a tariff for ICNAM service becomes effective, the tariff and all terms and conditions, including all rates, will supersede this Agreement.

#### **SECTION 7. CHARGES AND PAYMENT**

- A. ALLEGIANCE agrees to pay USWC for each and every query initiated into USWC's ICNAM database for any information at the rate of \$.016 per query, whether or not any information is actually provided.
- B. ICNAM rates will be billed to ALLEGIANCE monthly by USWC for the previous month. ALLEGIANCE agrees to pay the bill within thirty (30) days of the bill date. If payment is not received within thirty (30) days of the bill date, ALLEGIANCE agrees to pay a late charge of one and one half percent (1 1/2 %) per month, or the maximum percentage allowed by law, whichever is lower, on the unpaid balance.

#### **SECTION 8. LIMITATION OF LIABILITY**

Under no circumstances shall either party be liable to the other for any indirect, incidental, special, or consequential damages, including but not limited to, loss of business, loss of use, or loss of profits which arise in any way, in whole or in part, as a result of any action, error, mistake, or omission, whether or not negligence on the part of either party occurs. One party's liability to the other party for direct, actual damages shall not exceed the amount required to correct the error, mistake, or omission under this Agreement.

#### **SECTION 9. INDEMNIFICATION**

To the extent not prohibited by law, each party shall indemnify and hold harmless the other party, its officers, agents and employees from and against any loss, cost, claim, actions, damages or expense (including attorney fees), brought by a person not a party under this Agreement which relates to or arises out of the negligent or intentional acts, errors or omissions of the indemnifying party in connection with action or inaction under this Agreement. Notwithstanding the foregoing, it is understood that USWC shall

not be liable under any theory whatsoever to ALLEGIANCE's end users on account of any errors, omissions, deficiencies, or defects in the information provided pursuant to this Agreement.

#### **SECTION 10. LAWFULNESS OF AGREEMENT**

This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency and regulatory orders. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is so terminated but the parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

#### **SECTION 11. FORCE MAJEURE**

Neither party shall be held responsible for any delay in performance or failure to perform under this Agreement if such delay is caused by fires, strikes or other labor disputes, embargoes, explosion, power blackout, war, civil disturbance, governmental requirements, acts of God, or other causes beyond its control rendering performance impossible or commercially impracticable. If such contingency occurs, this Agreement will be suspended for the duration of the delaying cause and shall be resumed once the delaying cause ceases, provided such cause does not exist beyond 180 days, in which case, this Agreement, at the option of the injured party, shall be deemed terminated.

#### **SECTION 12. DISPUTE RESOLUTION**

Other than those claims over which a regulatory agency has exclusive jurisdiction, all disputes between the Parties shall be resolved by arbitration in accordance with the then current rules of the American Arbitration Association. The arbitration shall be conducted by a single arbitrator engaged in the practice of law. The arbitrator's decision and award shall be final and binding and may be entered in any court with jurisdiction. Federal law, not state law, shall govern the arbitrability of all claims.

#### **SECTION 13. NOTICES.**

All notices required by or relating to this Agreement shall be in writing and shall be sent to the Parties to this Agreement at their addresses set forth below, unless the same is changed from time to time, in which event each party shall notify the other in writing of such change. All such notices shall be deemed duly given if mailed, postage prepaid, and directed to the addresses then prevailing. If any questions arise about dates of notices, postmark dates control.

Allegiance Telecom of Arizona, Inc.

U S WEST Communications, Inc.

Robert McCausland  
VP Regulatory  
1950 North Stemmons Freeway, Suite 3026  
Dallas, TX 75207

Elizabeth Stamp  
Director – Interconnect Negotiations  
1801 California St., Rm 2410  
Denver, CO 80202

#### **SECTION 14. ASSIGNMENT**

ALLEGIANCE may not assign this Agreement to a third party without the prior written consent of USWC. A change in control, defined as a change in a party's controlling interest, whether by acquisition of voting stock, receipt of profits or otherwise, shall be deemed an assignment.

#### **SECTION 15. SEVERABILITY**

If any provision of the Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability or any other part or provision of this Agreement.

#### **SECTION 16. NON-WAIVER**

No course of dealing or failure of a party to enforce strictly any term, right, obligation or provision of this Agreement or to exercise any option provided hereunder shall be construed as a waiver of such provision.

#### **SECTION 17. MISCELLANEOUS**

USWC makes no representations nor does this Agreement imply that USWC will provide a service or a product beyond the term of this Agreement irrespective of the outcome. Notwithstanding any other provision of this Agreement, USWC reserves the right to discontinue the ICNAM service herein if incoming calls are so excessive as determined by USWC that the ICNAM database cannot operate in a quality manner.

#### **SECTION 18. GOVERNING LAW**

This Agreement and the obligations of the parties hereunder shall be construed and governed in accordance with the laws of the State in which services are provided under this Agreement.

#### **SECTION 19. ENTIRE AGREEMENT**

This Agreement contains the entire expression of the parties' bargain. No other documents or communications may be relied upon in interpreting this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

ALLEGIANCE Telecom of Arizona, Inc.

*Robert W. McCausland*

SIGNATURE - Robert W. McCausland

Vice-President - Regulatory

TITLE

*3-15-00*

DATE

U S WEST Communications, Inc.

*Elizabeth Stamp*

SIGNATURE - Elizabeth Stamp

Director - Interconnect Negotiations

TITLE

*03/23/00*

DATE

**EXHIBIT A****INFORMATION TO BE PROVIDED**

In response to queries properly received at USWC's databases, USWC will provide the following information that relates to the calling telephone number (where the information is actually available in USWC's database(s) and the delivery thereof is not blocked or otherwise limited by the end user, calling party or other appropriate request). ALLEGIANCE is responsible for properly and accurately launching and transmitting the query from its serving office to the USWC database(s).

Information:

1. Listed Name of the Calling Party

## EXHIBIT B

## SPECIFICATIONS AND STANDARDS

<u>Issuing Organization</u>	<u>Document Number</u>
A. Bellcore-SS7 Specification	TR-NPL-000246
B. ANSI-SS7 Specifications	
-Message Transfer Part	T1.111
-Signaling Connection Control Part	T1.112
-Transaction Capabilities Application Part	T1.114
C. Bellcore-CLASS Calling Name Delivery Generic Requirements	TR-NWT-001188
D. Bellcore-CCS Network Interface Specifications	TR-TSV-000905

# EXHIBIT S-4

## DIRECTORY ASSISTANCE AGREEMENT

This Directory Assistance Agreement ("Agreement") is made and entered into by and between U S WEST Communications, Inc. ("USWC") and Allegiance Telecom of Arizona, Inc. ("Allegiance"). This Agreement may refer to Allegiance or to USWC as a Party ("Party") to this Agreement. The Directory Assistance service(s) provided in this Agreement (the "Services") will be delivered in the state of Arizona.

WHEREAS, USWC desires to provide the Services as described herein.

NOW THEREFORE, in consideration of the promises, mutual covenants, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. SCOPE OF AGREEMENT

- 1.1 The Directory Assistance service is a telephone number, voice information service that USWC provides to other telecommunications carriers and its own end users. The published and non-listed telephone numbers provided within the relevant geographic area are only those contained in USWC's current Directory Assistance database. USWC offers the following five separate options:
  - 1.1.1 Local Directory Assistance Service - Permits Allegiance's end users to receive published and non-listed telephone numbers for their own NPA/LATA, whichever is greater.
  - 1.1.2 National Directory Assistance Service - Permits Allegiance's end users to receive listings for the entire United States database.
  - 1.1.3 Branding - Permits Allegiance's end users to receive the service options in 1.1.1 and 1.1.2 branded with the brand of Allegiance, where technically feasible. Call Branding provides the announcement of Allegiance's name to Allegiance's end user during the introduction of the call, and at the completion of the call. USWC will record the Brand.
  - 1.1.4 Directory Assistance Call Completion Service - Permits Allegiance's end users to connect to the requested local or intraLATA telephone number directly, where available, without having to dial another call, using the USWC intraLATA toll network. Call Completion is not available in the states of Iowa, Montana, Nebraska, South Dakota and Wyoming.
  - 1.1.5 Directory Assistance Call Completion Link Service - Permits Allegiance's end user to connect to the requested interLATA telephone number directly, where available, without having to dial another call. USWC will return the end user to Allegiance for completion. Call Completion Link is not available in the states of Iowa, Montana, Nebraska, South Dakota and Wyoming.

2. TERMS AND CONDITIONS

2.1 Allegiance elects to receive the following Directory Assistance service options:

- Local Directory Assistance
- National Directory Assistance
- Branding
- Directory Assistance Call Completion
- Directory Assistance Call Completion Link

2.2 Allegiance will complete the "USWC Operator Services/Directory Assistance Questionnaire for Local Service Providers" to request Services, and Allegiance represents that the information completed is true and correct to the best of its knowledge and belief.

2.3 USWC's Directory Assistance database contains only those published and non-listed telephone numbers provided to USWC by its own end users and other telecommunications carriers.

2.4 USWC will provide access to the Services via dedicated multi-frequency (MF) operator service trunks purchased from USWC or provided by Allegiance. These operator service trunks will be connected directly to USWC's Directory Assistance host switch or directly to a remote Directory Assistance switch via the trunk side. Allegiance will be required to order or provide an operator service trunk for each NPA served.

2.5 USWC will provide and maintain the equipment and personnel necessary to perform the Directory Assistance services specified in this Agreement. Allegiance will provide and maintain the equipment, facilities, lines and materials necessary to connect its telecommunication facilities to an agreed upon USWC's Operator Services switch.

3. TERM AND TERMINATION

This Agreement arises out of an Interconnection Agreement between the Parties which was approved by the Public Utilities Commission in the state of Arizona. This Agreement will become effective upon latest signature date, and will terminate at the same time as the said Interconnection Agreement.

4. RATE ELEMENTS

4.1 The following per call rate is applicable for Local Directory Assistance service and National Directory Assistance service, where selected by Allegiance.

Local Directory Assistance	\$ 0.28
National Directory Assistance	\$0.385

- 4.2 A non-recurring charge for studio set-up and recording will apply. The non-recurring studio/recording charge will be assessed each time the brand message is changed. The non-recurring charge to load the switches will be assessed each time there is any type of change to the switch. (CLECs offering service in more than one state will be assessed a one time only non-recurring charge for studio set-up and recording.) The non-recurring charge(s) must be paid prior to commencement of Service.

Branding – Studio Set-up and Record Brand: (Includes both front-end and back-end Brand)	\$10,500.00
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Branding – Load brand into Switch: (Per Switch)	\$175.00
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- 4.3 A per call rate for Directory Assistance Call Completion and Directory Assistance Call Completion Link will be applicable. Additional charges for USWC IntraLATA Toll services also apply for completed intraLATA toll calls. Additional charges for interLATA may apply from the interLATA toll carrier.

Directory Assistance Call Completion	\$.06
Directory Assistance Call Completion Link	\$.085

## 5. BILLING

- 5.1 USWC will track and bill Allegiance on a monthly basis for the number of calls placed to USWC's Directory Assistance service by Allegiance's end users. USWC will also track and bill monthly the number of Call Completion requests.
- 5.2 For purposes of determining when Allegiance is obligated to pay the per call rate, the call will be deemed made and Allegiance will be obligated to pay when the call is answered. An end user may request and receive no more than two telephone numbers per Directory Assistance call. USWC will not credit, rebate or waive the per call charge due to any failure to provide a telephone number, or due to any incorrect information.
- 5.3 Allegiance alone and independently establishes all prices it charges its end users for the Directory Assistance and Call Completion Services provided by means of this Agreement.

## 6. PAYMENT

- 6.1 Amounts payable under this Agreement are due and payable within thirty (30) days after the date of invoice.

- 6.2 Unless prohibited by law, any amount due and not paid by the due date stated above will be subject to a late charge equal to either i) 0.03 percent per day compounded daily for the number of calendar days from the payment due date to and including, the date of payment, that would result in an annual percentage rate of 12% or ii) the highest lawful rate, whichever is less.
- 6.3 Should Allegiance dispute any portion of the monthly billing under this Agreement, Allegiance will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. Allegiance will pay all amounts due. Both Allegiance and USWC agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies.

## **7. CONFIDENTIAL INFORMATION**

- 7.1 "Confidential Information" means all documentation and technical and business information, whether oral, written or visual, which is legally entitled to be protected from disclosure, which a Party to this Agreement may furnish to the other Party or has furnished in contemplation of this Agreement to such other Party. Each Party agrees (1) to treat all such Confidential Information strictly as confidential and (2) to use such Confidential Information only for purposes of performance under this Agreement or for related purposes.
- 7.2 The Parties shall not disclose Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of an obligation to, or in connection with any proceeding before any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court. The Parties' obligations under this Section shall continue for one (1) year following termination or expiration of this Agreement.

## **8. FORCE MAJEURE**

With the exception of payment of charges due under this Agreement, a Party shall be excused from performance if its performance is prevented by acts or events beyond the Party's reasonable control, including but not limited to, severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; computer failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

## **9. LIMITATION OF LIABILITY**

USWC SHALL BE LIABLE TO ALLEGIANCE, AND ALLEGIANCE ONLY, FOR THE ACTS OR OMISSIONS OF USWC, EXPRESSLY INCLUDING THE NEGLIGENT ACTS OR OMISSIONS OF USWC OR THOSE ATTRIBUTABLE TO USWC, IN CONNECTION WITH USWC'S SUPPLYING OR ALLEGIANCE'S USING THE DIRECTORY ASSISTANCE SERVICE, BUT STRICTLY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THIS AGREEMENT. IT IS EXPRESSLY AGREED

THAT USWC'S LIABILITY TO ALLEGIANCE, AND ALLEGIANCE'S SOLE AND ONLY REMEDY FOR ANY DAMAGES ARISING IN CONNECTION WITH THE SERVICES AND THIS AGREEMENT SHALL BE A REFUND TO ALLEGIANCE OF THE AMOUNT OF THE CHARGES BILLED AND PAID BY ALLEGIANCE TO USWC FOR FAILED OR DEFECTIVE SERVICES. UNDER NO CIRCUMSTANCES OR THEORY, WHETHER BREACH OF AGREEMENT, PRODUCT LIABILITY, TORT, OR OTHERWISE, SHALL USWC BE LIABLE FOR LOSS OF REVENUE, LOSS OF PROFIT, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES OR INCIDENTAL DAMAGES, AND ANY CLAIM FOR DIRECT DAMAGES SHALL BE LIMITED AS SET FORTH ABOVE. UNDER NO CIRCUMSTANCES SHALL USWC EVER BE LIABLE TO ALLEGIANCE'S END USERS FOR ANY DAMAGES WHATSOEVER.

## **10. INDEMNIFICATION**

Each Party to this Agreement hereby indemnifies and holds harmless the other Party with respect to any third-party claims, lawsuits, damages or court actions arising from performance under this Agreement to the extent that the indemnifying Party is liable or responsible for said third-party claims, losses, damages, or court actions. Allegiance is indemnifying USWC from any claim made against it by a Allegiance end user on account of Allegiance's end user's use or attempted use of the Directory Assistance service. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification shall promptly notify the other Party of the claim and, when known, the facts constituting the basis for such claim. In the event that one Party to this Agreement disputes the other Party's right to indemnification hereunder, the Party disputing indemnification shall promptly notify the other Party of the factual basis for disputing indemnification. Indemnification shall include, but is not limited to, costs and attorneys' fees.

## **11. LAWFULNESS OF AGREEMENT**

- 11.1 This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. This Agreement shall only be effective when mandatory regulatory filing requirements are met, if applicable. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement shall terminate on written notice to Allegiance to that effect.
- 11.2 If a provision of this Agreement is so terminated, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may terminate this Agreement.

## **12. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state in which the Directory Assistance service is delivered to the end user.

**13. DISPUTE RESOLUTION**

Any claim, controversy or dispute between the Parties shall be resolved by arbitration in accordance with the then current rules of the American Arbitration Association. The arbitration shall be conducted by a single arbitrator engaged in the practice of law and knowledgeable about telecommunications. The arbitrator's decision and award shall be final and binding and may be entered in any court with jurisdiction.

**14. DEFAULT**

If a Party defaults in the performance of any substantial obligation herein, and such default continues, uncured and uncorrected, for thirty (30) days after written notice to cure or correct such default, then the non-defaulting Party may immediately terminate this Agreement. Subject to Section 9 (Limitation of Liability) above, the non-defaulting Party may also pursue other permitted remedies by arbitration as set forth above.

**15. SUCCESSORS, ASSIGNMENT**

This Agreement binds the Parties, their successors, and their assigns. Either Party may assign its rights and delegate its duties under this Agreement with the express, written permission of the other Party, which permission shall not unreasonably be withheld; provided, however, that USWC may assign its rights and delegate its duties under this Agreement to its parent, its subsidiaries, or its affiliates without prior, written permission.

**16. AMENDMENTS TO AGREEMENT**

The Parties may by mutual agreement and execution of a written amendment to this Agreement amend, modify, or add to the provisions of this Agreement.

**17. NOTICES**

All notices required or appropriate in connection with this Agreement shall be in writing and shall be deemed effective and given upon deposit in the United States Mail, postage pre-paid, addressed as follows:

**Allegiance**  
Robert McCausland  
1950 North Stemmons Freeway, Suite 3026  
Dallas, TX 75207

**USWC**  
Director - Interconnection Compliance  
1801 California Street, Suite 2410  
Denver, CO 80202

**Copy to:**  
U S WEST Law Department  
General Counsel - Interconnection  
1801 California Street, Suite 4900  
Denver, CO 80202

18. ENTIRE AGREEMENT

This Agreement, together with any jointly-executed written amendments, constitutes the entire agreement and the complete understanding between the Parties. No other verbal or written representation of any kind affects the rights or the obligations of the Parties regarding any of the provisions in this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

Allegiance Telecom of Arizona, Inc.

Robert W. McCausland  
Signature  
Robert W. McCausland  
Name Printed/Typed  
Vice President  
Title  
6/21/00  
Date

U S WEST Communications, Inc.

Giuliana Brunner  
Signature  
GIULIANA Brunner  
Name Printed/Typed  
Account Mgr  
Title  
6/29/00  
Date

# EXHIBIT S-5

**InterNetwork Calling Name (ICNAM) Amendm...**  
**to the Interconnection Agreement between**  
**Qwest Corporation and**  

---

**for the State of Arizona**

This is an Amendment ("Amendment") for InterNetwork Calling Name (ICNAM) to the Interconnection Agreement between Qwest Corporation ("Qwest"), a Colorado corporation, and \_\_\_\_\_ ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties".

**RECITALS**

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement ("Agreement") for service in the state of Arizona which was approved by the Arizona Corporation Commission ("Commission"); and

WHEREAS, the Parties wish to amend the Agreement further under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Amendment Terms**

The Agreement is hereby amended by adding terms, conditions and rates for InterNetwork Calling Name (ICNAM) as set forth in Attachment 1 and Exhibit A, to this Amendment, attached hereto and incorporated herein by this reference.

**Effective Date**

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met.

**Further Amendments**

Except as modified herein, the provisions of the Agreement shall remain in full force and effect. Provisions of this Amendment, including the provisions of this sentence, may not be, amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or

\_\_\_\_\_  
Amd CLEC name/state

not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**Entire Agreement**

This Amendment (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Amendment and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

\_\_\_\_\_  
  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Name Printed/Typed  
  
\_\_\_\_\_  
Title  
  
\_\_\_\_\_  
Date

**Qwest Corporation**  
  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Name Printed/Typed  
  
\_\_\_\_\_  
Title  
  
\_\_\_\_\_  
Date

## ATTACHMENT 1

**9.17 InterNetwork Calling Name (ICNAM)****9.17.1 Description**

9.17.1.1 InterNetwork Calling Name (ICNAM) is a Qwest service that allows CLEC to query Qwest's ICNAM database and secure the listed name information for the requested telephone number (calling number), in order to deliver that information to CLEC's End User Customers.

9.17.1.2 ICNAM database contains current listed name data by working telephone number served or administered by Qwest, including listed name data provided by other Telecommunications Carriers participating in the calling name delivery service arrangement.

**9.17.2 Terms and Conditions**

9.17.2.1 In response to queries properly received at Qwest's ICNAM database, Qwest will provide the listed name of the calling party that relates to the calling telephone number (when the information is actually available in Qwest's database and the delivery thereof is not blocked or otherwise limited by the calling party or other appropriate request). CLEC is responsible for properly and accurately launching and transmitting the query from its serving office to the Qwest database.

9.17.2.2 In response to proper signaling queries, Qwest will provide CLEC with ICNAM database End User Customer information if the calling party's End User Customer information is stored in the Qwest ICNAM database. As a result, the called party End User Customer can identify the calling party listed name prior to receiving the call, except in those cases where the calling party End User Customer has its ICNAM information blocked.

9.17.2.3 Qwest will allow CLEC to query Qwest's ICNAM database in order to obtain ICNAM information that identifies the calling party End User Customer.

9.17.2.4 The ICNAM service shall include the database dip and transport from Qwest's regional STP to Qwest's SCP where the database is located. Transport from CLEC's network to Qwest's local STP is provided via Links, which are described and priced in the CCSAC/SS7 Section of the Agreement.

9.17.2.5 CLEC shall send queries conforming to the American National Standards Institute's (ANSI) approved standards for SS7 protocol and per the following specification standard documents:

- a) Telcordia-SS7 Specification, TR-NPL-000246;
- b) ANSI-SS7 Specifications;
- c) Message Transfer Part T1.111;

- d) Signaling Connection Control Part T1.112;
- e) Transaction Capabilities Application Part T1.114;
- f) Telcordia-CLASS Calling Name Delivery;
- g) Generic Requirements, TR-NWT-001188; and
- h) Telcordia-CCS Network Interface Specifications, TR-TSV-000905.

9.17.2.6 CLEC acknowledges that transmission in the above protocol is necessary for Qwest to provision its ICNAM services. CLEC will adhere to other applicable standards, which include Telcordia specifications defining service applications, message types and formats. Qwest may modify its network pursuant to other specification standards that may become necessary to meet the prevailing demands within the United States Telecommunications industry. All such changes shall be announced in advance and coordinated with CLEC.

9.17.2.7 All queries to Qwest's ICNAM database shall use a subsystem number (the designation of application) value of 250 with a translation type value of 5. CLEC acknowledges that such subsystem number and translation type values are necessary for Qwest to properly process queries to Qwest's ICNAM database.

9.17.2.8 CLEC acknowledges and agrees that SS7 network overload due to extraordinary volumes of queries and/or other SS7 network messages can and will have a detrimental effect on the performance of Qwest's SS7 network. CLEC further agrees that Qwest, in its sole discretion, shall employ certain automatic and/or manual overload controls within the Qwest SS7 network to safeguard against any detrimental effects. Qwest shall report to CLEC any instances where overload controls are invoked due to CLEC's SS7 network, and CLEC agrees in such cases to take immediate corrective actions as necessary to cure the conditions causing the overload situation.

9.17.2.9 Qwest shall exercise reasonable efforts to provide accurate and complete ICNAM information in Qwest's ICNAM database. The ICNAM information is provided on an as-is Basis with all faults. Qwest does not warrant or guarantee the correctness or the completeness of such information; however, Qwest will access the same ICNAM database for CLEC's queries as Qwest accesses for its own queries. In no event shall Qwest have any liability for system outage or inaccessibility or for losses arising from the authorized use of the ICNAM data by CLEC.

9.17.2.10 CLEC shall arrange its Calling Party Number based services in such a manner that when a calling party requests privacy, CLEC will not reveal that caller's name or number to the called party (CLEC's End User Customer). CLEC will comply with all FCC guidelines and, if applicable, the appropriate Commission rules, with regard to honoring the privacy indicator.

9.17.2.11 Qwest retains full and complete ownership and control over the ICNAM database and all information in its database. CLEC agrees not to copy, store, maintain or create any table or database of any kind from any response received after initiating an ICNAM query to Qwest's database. CLEC will prohibit its End User Customers from copying, storing, maintaining, or creating any table or database of any kind from any

response provided by CLEC to its End User after CLEC initiated an ICNAM query to Qwest's ICNAM database.

9.17.2.12 Qwest reserves the right to temporarily discontinue the ICNAM service if CLEC's incoming calls are so excessive as determined by Qwest to jeopardize the viability of the ICNAM service.

### **9.17.3 Rate Elements**

Rate elements for ICNAM services are contained in Exhibit A of this Amendment.

### **9.17.4 Billing**

9.17.4.1 CLEC agrees to pay Qwest for each and every query initiated into Qwest's ICNAM database for any information, whether or not any information is actually provided.

9.17.4.2 ICNAM rates will be billed to CLEC monthly by Qwest for the previous month.

### **9.17.5 Ordering Process**

9.17.5.1 CLEC shall order access to Qwest local STP (links and ports) prior to or in conjunction with ICNAM Services. Section 9.13 of the Agreement contains information on ordering SS7 and STP links and ports.

9.17.5.2 If CLEC has an existing database of names that needs to be compiled into the appropriate format, ICNAM service will begin thirty (30) Days after Qwest has received from CLEC its database information.

9.17.5.3 If CLEC has no existing End User Customer base, then ICNAM service will begin seven (7) Days after Qwest receives CLEC order.

Exhibit A  
Arizona\*

Amendment				
		Recurring	Non-Recurring	Notes
9.17 ICNAM, Per Query		\$ 0.00082156		

# Local Service Request

Qwest

## Administrative Section

CCNA	VER	LSR NO	LOC QTY	HT QTY	AN
ATN	SC	SC1	SC2	RESID	D/TSENT
DSPTCH	APPTIME	APT COR	PG OF	DDDO	APPTIME
LSCP	CHC	TEST	REQ TYP	P	SLI
AGAUTH	AGAUTH	DATED	MI	CONVIND	SUP
ALBR	ALBR	SCA	ACT	ACTL	ACTL
APOT	LST	RPON	TOS	NC	PBT
SECHCI	LSP	CHC	TEST	REQ TYP	EXP
LSPAN	CIC	CUST	APPTIME	APT COR	MEU
BILLN	SBILLN	FLOOR	ROOM/MAIL STOP	VTA	TE
STATE	STATE	ZIP	BILLCON	STATE	ZIP
ALT	ALT	IMPCON	STATE	ZIP	IMPCON
TEL NO	TEL NO	FAX NO	STATE	ZIP	IMPCON

## Bill Section

B11	BAN1	B12	BAN2	BAPC	ACNA	EBD	CNO	NRI
BILLN	SBILLN	FLOOR	ROOM/MAIL STOP	TE	EBP	CITY	CITY	CITY
STATE	STATE	ZIP	BILLCON	STATE	ZIP	IMPCON	STATE	ZIP
ALT	ALT	IMPCON	STATE	ZIP	IMPCON	STATE	ZIP	IMPCON
TEL NO	TEL NO	FAX NO	STATE	ZIP	IMPCON	STATE	ZIP	IMPCON

## Contact Section

INIT	TEL NO	FAX NO
EMAIL	ROOM/MAIL STOP	CITY
STREET	PAGER	PSGCON
STATE	TEL NO	PSGCON
ALT	TEL NO	PSGCON
TEL NO	FAX NO	PSGCON

This Qwest Specific Form is based upon the Alliance of Telecommunications Solutions (ATS) Order and Billing Form 101. (CB) Industry consensus approved guidelines. The Qwest Specific Form can be found at <http://qwest.com/webstore/class/101.htm>





# EXHIBIT S-6

NEW APPLICATION

LAW OFFICES

**FENNEMORE CRAIG**

A PROFESSIONAL CORPORATION

RECEIVED

2002 MAR 27 P 3:33

**DARCY R. RENFRO**

Direct Phone: (602) 916-5345  
Direct Fax: (602) 916-5545  
drenfro@fclaw.com

OFFICES IN:  
AZ CORP. PHOENIX, TUCSON,  
DOCUMENT SERVICES, AZ: LINCOLN, NE  
3003 NORTH CENTRAL AVENUE  
SUITE 2600  
PHOENIX, ARIZONA 85012-2913  
PHONE: (602) 916-5000  
FAX: (602) 916-5999

March 27, 2002

**BY HAND DELIVERY**

**T-01051B-02-0237**  
**T-03016A-02-0237**

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

Re: In the Matter of the Application of Qwest Corporation for Approval of ICNAM  
Amendment to the Interconnection Agreement with TCG-Phoenix.

Dear Madam or Sir:

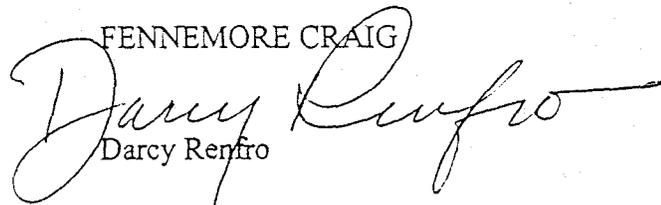
Please find enclosed an original and ten (10) copies each of the ICNAM Amendment to the Interconnection Agreement between Qwest Corporation ("Qwest") and TCG-Phoenix ("TCG").

This Amendment is made in order to add terms, conditions and rates for ICNAM unbundled network elements as set forth in Attachment 1 and Exhibits A and B. The Arizona Corporation Commission approved the underlying Agreement between Qwest and TCG-Phoenix on October 18, 1996, in Docket Nos. U-3016-96-402 and E-1051-96-402, Decision No. 59937. Enclosed is a service list for these dockets.

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: Michael Hydock, AT&T  
Mitchell H. Menezes, AT&T,  
Richard S. Wolters, AT&T  
Ernest G. Johnson, Director, ACC Utilities Division  
Chris Kempley, Chief Counsel, ACC Legal Division

# FENNEMORE CRAIG

Docket Control  
March 27, 2002  
Page 2

SERVICE LIST FOR: Qwest Communications  
Docket Nos. U-3016-96-402 and E-1051-96-402

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

Michael Hydock, District Manager  
AT&T Corp.  
1875 Lawrence Street, 10<sup>th</sup> Floor  
Denver, CO 80202

Mitchell H. Menezes  
Chief Commercial Counsel  
AT&T Corp.  
1875 Lawrence Street, 10<sup>th</sup> Floor  
Denver, CO 80202

Richard S. Wolters  
AT&T Corp.  
1875 Lawrence Street, 10<sup>th</sup> Floor  
Denver, CO 80202

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

**InterNetwork Calling Name (ICNAM)  
Amendment Number 4  
to the Interconnection Agreement between  
Qwest Corporation and  
TCG-Phoenix  
for the State of Arizona**

This is an Amendment ("Amendment") for InterNetwork Calling Name (ICNAM) to the Interconnection Agreement between Qwest Corporation ("Qwest"), a Colorado corporation, and TCG-Phoenix ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties."

**RECITALS**

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement ("Agreement") for service in the state of Arizona which was approved by the Arizona Corporation Commission ("Commission"); and

WHEREAS, the Parties wish to amend the Agreement further under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**A. Amendment Terms**

The Agreement is hereby amended by adding terms, conditions and rates for ICNAM unbundled network element services (ICNAM) as set forth in Attachment 1 and Exhibits A and B to this Amendment, attached hereto and incorporated herein by this reference. The Agreement's terms regarding non-discriminatory access to and the quality of unbundled network elements will apply to ICNAM. Reference is made in particular to the terms set forth in Amendment No. 3 to the Agreement, Local Switching and Unbundled Network Elements Combinations.

**B. Effective Date**

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met. Qwest shall be in a position to process such orders within a reasonable time after execution of this Amendment, assuming Qwest has received all necessary information from CLEC by the time this Amendment is fully executed.

C. Further Amendments

Except as modified herein, the provisions of the Agreement shall remain in full force and effect. Neither the Agreement nor this Amendment may be further amended or altered except by written instrument executed by an authorized representative of both Parties.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

D. Reservation of Rights

Qwest acknowledges that CLEC believes that the rates, terms and conditions set forth in this Amendment should be altered. The Parties acknowledge that the rates, terms and conditions set forth in this Amendment are taken from Qwest's SGAT which is currently under review by the Commission for impasse resolution as part of Qwest's application under Section 271 of the Act. If rates, terms or conditions set forth in Qwest's SGAT, from which provisions of this Amendment were taken, are modified by order of the Commission, the Parties shall amend this Agreement to incorporate such changes. The rates, and to the extent practicable, other terms and conditions contained in a modification to this Amendment that results from SGAT changes ordered by the Commission will relate back to the date this Amendment was executed. The Parties enter into this Amendment without prejudice to or waiver of any of their respective rights to challenge the terms and conditions of this Amendment under the Act, FCC or Commission rules.

TCG-Phoenix

Michael Hydock  
Signature

MICHAEL HYDOCK  
Name Printed/Typed

DISTRICT MANAGER  
Title

3/6/02  
Date

Qwest Corporation

L. T. Christensen  
Signature

L. T. Christensen  
Name Printed/Typed

Director - Business Policy  
Title

3/13/02  
Date

## ATTACHMENT 1

## ICNAM

Qwest shall provide access to ICNAM in a non-discriminatory manner according to the following terms and conditions.

**1. Description**

1.1 InterNetwork Calling Name (ICNAM) is a Qwest service that allows CLEC to query Qwest's ICNAM database and secure the listed name information for the requested telephone number (calling number), in order to deliver that information to CLEC's end users.

1.2 ICNAM database contains current listed name data by working telephone number served or administered by Qwest, including listed name data provided by other Telecommunications Carriers participating in the calling name delivery service arrangement.

**2. Terms and Conditions**

2.1 In response to queries properly received at Qwest's ICNAM database, Qwest will provide the listed name of the calling party that relates to the calling telephone number (when the information is actually available in Qwest's database and the delivery thereof is not blocked or otherwise limited by the calling party or other appropriate request). CLEC is responsible for properly and accurately launching and transmitting the query from its serving office to the Qwest database.

2.2 In response to proper signaling queries, Qwest will provide CLEC with ICNAM database end user information if the calling party's end user information is stored in the Qwest ICNAM database. As a result, the called party end user can identify the calling party listed name prior to receiving the call, except in those cases where the calling party end user has its ICNAM information blocked.

2.3 Qwest will allow CLEC to query Qwest's ICNAM database in order to obtain ICNAM information that identifies the calling party end user. The parties acknowledge that Qwest may bill CLEC for all queries that contain the SSP's Point Code identified in Exhibit B and for which CNAM is provided.

2.4 The ICNAM service shall include the database dip and transport from Qwest's regional STP to Qwest's SCP where the database is located. Transport from CLEC's network to Qwest's regional STP where the database is located is provided via existing D-Links between AT&T and Qwest..., which are described in the Nondiscriminatory Access to Network Elements – Nondiscriminatory Access to Databases and Associated Signaling Section of this Agreement.

2.5 CLEC shall send queries conforming to the American National Standards Institute's (ANSI) approved standards for SS7 protocol and per the following specification standard documents:

- a) Telcordia-SS7 Specification, TR-NPL-000246;
- b) ANSI-SS7 Specifications;
- c) Message Transfer Part T1.111;
- d) Signaling Connection Control Part T1.112;
- e) Transaction Capabilities Application Part T1.114;
- f) Telcordia-CLASS Calling Name Delivery;
- g) Generic Requirements, TR-NWT-001188; and
- h) Telcordia-CCS Network Interface Specifications, TR-TSV-000905.

2.6 CLEC acknowledges that transmission in the above protocol is necessary for Qwest to provision its ICNAM services. CLEC will adhere to other applicable standards, which include Telcordia specifications defining service applications, message types and formats. Qwest may modify its network pursuant to other specification standards that may become necessary to meet the prevailing demands within the United States telecommunications industry. All such changes shall be announced sufficiently in advance and coordinated with CLEC.

2.7 All queries to Qwest's ICNAM database shall use a subsystem number (the designation of application) value of 250 with a translation type value of 5. CLEC acknowledges that such subsystem number and translation type values are necessary for Qwest to properly process queries to Qwest's ICNAM database.

2.8 CLEC acknowledges and agrees that SS7 network overload due to extraordinary volumes of queries and/or other SS7 network messages can and will have a detrimental effect on the performance of Qwest's SS7 network. CLEC further agrees that Qwest, in its sole discretion and on a nondiscriminatory basis, shall employ certain automatic and/or manual overload controls within the Qwest SS7 network to safeguard against any detrimental effects. Qwest shall report to CLEC any instances where overload controls are invoked due to CLEC's SS7 network, and CLEC agrees in such cases to take immediate corrective actions as necessary to cure the conditions causing the overload situation.

2.9 Qwest shall exercise reasonable efforts to provide accurate and complete ICNAM information in Qwest's ICNAM database. The ICNAM information is provided on an as-is Basis with all faults. Qwest does not warrant or guarantee the correctness or the completeness of such information; however, Qwest will access the same ICNAM database for CLEC's queries as Qwest accesses for its own queries. In no event shall Qwest have any liability for system outage or inaccessibility or for losses arising from the unauthorized use of the ICNAM data by CLEC.

2.10 CLEC shall arrange its Calling Party Number based services in such a manner that when a calling party requests privacy, CLEC will not reveal that caller's name or number to the called party (CLEC's end user). CLEC will comply with all FCC guidelines and, if applicable, the appropriate Commission rules, with regard to honoring the privacy indicator.

2.11 Qwest retains full and complete ownership and control over its ICNAM database and all information in its database. CLEC agrees not to copy, store, maintain or create any table or

database of any kind from any response received after initiating an ICNAM query to Qwest's database. CLEC will, to the best of its ability, using reasonable methods, prohibit its end users from copying, storing, maintaining, or creating any table or database of any kind from any response provided by CLEC to its end user after CLEC initiated an ICNAM query to Qwest's ICNAM database.

2.12 Qwest reserves the right to temporarily discontinue the ICNAM service if CLEC's incoming calls are so excessive as determined by Qwest to jeopardize the viability of the ICNAM service. Such right is limited by Qwest's duty to provide ICNAM service to CLEC on the same basis and in the same time, manner and quality that Qwest provides such service to itself, its end user customers, its affiliates, or any other party. Qwest and CLEC will work cooperatively to remedy any excessive or overload conditions to ensure that impacts to end user customers are minimized. Qwest shall take all appropriate steps to ensure that sufficient capacity is available to accommodate CLEC queries to the ICNAM database.

### **3. Rate Elements**

Rate elements for ICNAM services are contained in Exhibit A of this Agreement.

### **4. Billing**

4.1 CLEC agrees to pay Qwest for each and every query initiated into Qwest's ICNAM database for any information, when such information is actually provided.

4.2 ICNAM rates will be billed to CLEC monthly by Qwest for the previous month.

4.3 ICNAM queries will be billed in accordance with rates set in the state in which the query originates.

4.4 All ICNAM queries originating outside of the traditional Qwest 14 state boundaries must be covered by separate agreement.

### **5. Ordering Process**

5.1 CLEC shall order access to Qwest local STP (links and ports) prior to or in conjunction with ICNAM Services.

5.2 If CLEC has an existing database of names that needs to be compiled into the appropriate format, ICNAM service will begin thirty (30) days after Qwest has received from CLEC its database information. At the time of execution of this Amendment, CLEC does not have an existing database of names that needs to be compiled into the appropriate format.

5.3 If CLEC has no existing end user base, then ICNAM service will begin seven (7) days after Qwest receives the CLEC order.

Exhibit A  
Arizona\*

	Recurring	Non- Recurring	Notes
9.17 ICNAM, Per Query	\$0.000836		1

NOTES:

[1] Rates addressed in Arizona Cost Docket 6/27/01 & Phase II Docket Number T-00000A-00-0194. (TELRIC)

## EXHIBIT B

<u>SWITCH CLLI</u>	<u>POINT CODE</u>	<u>STATE</u>	<u>ZIP</u>	<u>LATA</u>	<u>OCN</u>
PHNXAZMADS9	005-019-008	AZ	85003	666	7217
PHNYAZUXDS0	005-009-081	AZ	85016	666	7217

LAW OFFICES

**FENNEMORE CRAIG**

A PROFESSIONAL CORPORATION

2002 SEP 24 4:13

OFFICES IN:  
PHOENIX, TUCSON AND NOGALES

**DARCY RENFRO**

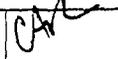
Direct Phone: (602) 916-5345  
Direct Fax: (602) 916-5545  
drenfro@fclaw.com

Arizona Corporation Commission  
**DOCKETED**

**AZ CORP COMMISSION  
DOCUMENT CONTROL**

3003 NORTH CENTRAL AVENUE  
SUITE 2600  
PHOENIX, ARIZONA 85012-2913  
PHONE: (602) 916-5000  
FAX: (602) 916-5999

SEP 24 2002

DOCKETED BY   
September 24, 2002

**BY HAND DELIVERY**

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

**T-01051B-02-0728  
T-02575A-02-0728**

Re: In the Matter of the Amendment for Directory Assistance and Operator Services to the Interconnection Agreement between Qwest Corporation and POPP Telecom, Inc., d/b/a POPP Communications.

Dear Madam or Sir:

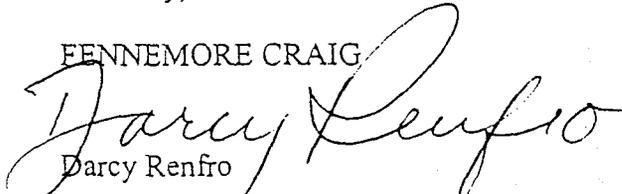
Please find enclosed an Amendment for Directory Assistance and Operator Services to the Interconnection Agreement between Qwest Corporation ("Qwest") and POPP Telecom, Inc., d/b/a POPP Communications ("POPP").

This Amendment seeks to replace in its entirety, the existing terms, conditions and rates for Directory Assistance and Operator Services, as set forth in Attachments 1 and 2 and Exhibit A. The Arizona Corporation Commission already approved the underlying Agreement between Qwest and POPP on August 6, 2001 in Docket Nos. T-01051B-01-0352 and T-02575B-01-0352, Decision No. 63895. Enclosed is a service list for these dockets.

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: William Popp, POPP Telecom, Inc.  
Ernest G. Johnson, Director, ACC Utilities Division  
Chris Kempley, Chief Counsel, ACC Legal Division

# FENNEMORE CRAIG

Docket Control  
September 24, 2002  
Page 2

SERVICE LIST FOR: Qwest Communications  
Docket Nos. T-01051B-01-0352 and T-02757B-01-0352

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

William Popp  
POPP Telecom, Inc.  
620 Mendelssohn Avenue  
Golden Valley, MN 55427

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

Amendment for  
Directory Assistance and Operator Services  
to the  
Interconnection Agreement  
between  
Qwest Corporation  
and  
POPP Telecom, Inc., d/b/a POPP Communications  
for the State of Arizona

This Amendment ("Amendment") is to the Interconnection Agreement between Qwest Corporation (f/k/a U S WEST Communications, Inc.) ("Qwest"), a Colorado corporation, and POPP Telecom, Inc., d/b/a POPP Communications ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties".

**RECITALS**

WHEREAS, the Parties entered into an Interconnection Agreement, for service in the State of Arizona, that was approved by the Arizona Corporation Commission ("Commission") on August 6, 2001 ("Agreement"); and

WHEREAS, the Parties wish to amend the Agreement under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Amendment Terms**

This Amendment is made in order to replace, in its entirety, the existing terms, conditions and rates for Directory Assistance and Operator Services, with the new language set forth in Attachments 1 and 2, and Exhibit A, attached hereto and incorporated herein.

**2. Effective Date**

This Amendment shall be deemed effective upon Commission approval; however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met.

3. Amendments; Waivers

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

4. Entire Agreement

This Amendment (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Amendment and supersedes any prior understandings, agreements, amendments, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**POPP Telecom, Inc., d/b/a POPP  
Communications**

Sarah Padula  
Authorized Signature

Sarah Padula  
Name Printed/Typed

Controller, Treasurer  
Title

9/10/02  
Date

**Qwest Corporation**

L. T. Christensen  
Authorized Signature

L. T. Christensen  
Name Printed/Typed

Director - Business Policy  
Title

9/10/02  
Date

## ATTACHMENT 1

### 10.5 Directory Assistance

#### 10.5.1 Description

10.5.1.1 Directory Assistance Service is a telephone number, voice information service that Qwest provides to its own end users and to other Telecommunications Carriers. Qwest provides CLEC non-discriminatory access to Qwest's directory assistance centers, services and Directory Assistance Databases. There are three (3) forms of Directory Assistance Services available pursuant to this Amendment -- Directory Assistance Service, Directory Assistance List Services, and Directory Assistance Database Service. These services are available with CLEC-specific branding, generic branding and Directory Assistance Call Completion Link options.

10.5.1.1.1 Directory Assistance Service. The published and non-listed telephone numbers provided within the relevant geographic area are those contained in Qwest's then current Directory Assistance Database.

10.5.1.1.1.1 Local Directory Assistance Service -- Allows CLEC's end users to receive published and non-listed telephone numbers within the caller's NPA/LATA geographic areas, whichever is greater.

10.5.1.1.1.2 National Directory Assistance Service -- Allows CLEC's end users to receive listings from Qwest's Local Directory Assistance Database and from the database of the National Directory Assistance Services vendor selected by Qwest. National Directory Assistance Service includes Local Directory Assistance Service.

10.5.1.1.1.3 Call Branding Service -- Allows CLEC's end users to receive the service options listed in 10.5.1.1.1.1 and 10.5.1.1.1.2 branded with the brand of CLEC, where Technically Feasible or with a generic brand. Call Branding announces CLEC's name to CLEC's end user at the start and completion of the call. Call Branding is an optional service available to CLEC.

a) Front End Brand -- Announces CLEC's name to CLEC's end user at the start of the call. There is a nonrecurring charge to setup and record the Front End Brand message.

b) Back End Brand -- Announces CLEC's name to CLEC's end user at the completion of the call. There is a nonrecurring charge to setup and record the Back End

Brand message.

c) There is a nonrecurring charge to load CLEC's branded message in each Switch.

d) Qwest will record CLEC's branded message.

10.5.1.1.1.4 Call Completion Link allows CLEC's end users' calls to be returned to CLEC for completion on CLEC's network, where available. There is a recurring charge per call.

10.5.1.1.2 Directory Assistance List Service -- Directory Assistance List Service is the access to Qwest's directory listings for subscribers within Qwest's fourteen (14) states for the purpose of providing Directory Assistance Service to its local exchange end user Customers subject to the terms and conditions of this Amendment. See Section 10.6 for terms and conditions relating to the Directory Assistance List Services.

10.5.1.1.2.1 If CLEC elects to build its own Directory Assistance Service, it can obtain Qwest directory listings through the purchase of the Directory Assistance List.

10.5.1.1.3 Directory Assistance Database Service -- Qwest shall provide CLEC non-discriminatory access to Qwest's Directory Assistance Database or "Directory1" database, where Technically Feasible, on a "per dip" basis.

## 10.5.2 Terms and Conditions

10.5.2.1 Qwest will provide CLEC non-discriminatory access to Qwest's Directory Assistance Databases, directory assistance centers and personnel to provide Directory Assistance Service.

10.5.2.2 Qwest's Directory assistance database contains only those published and non-listed telephone number listings obtained by Qwest from its own end users and other Telecommunications Carriers.

10.5.2.3 Qwest will provide access to Directory Assistance Service for facility-based CLECs via dedicated multi-frequency (MF) operator service trunks. CLEC may purchase operator service trunks from Qwest or provide them itself. These operator service trunks will be connected directly to a Qwest Directory Assistance host or remote Switch. CLEC will be required to order or provide at least one operator services trunk for each NPA served.

10.5.2.4 Qwest will perform Directory Assistance Services for CLEC in accordance with operating methods, practices, and standards in effect for all Qwest end users. Qwest will provide the same priority of handling for CLEC's end user calls to Qwest's Directory Assistance Service as it provides for its own end user calls. Calls to Qwest's directory assistance are handled on a first come, first served basis, without regard to whether calls are originated by CLEC

or Qwest end users.

10.5.2.5 Call Branding for Directory Assistance will entail recording and setting up a brand message. Dedicated interoffice facilities are required.

10.5.2.6 Call Completion Link requires dedicated interoffice facilities.

10.5.2.7 If CLEC elects to access the Qwest Directory assistance databases on a per dip basis, Qwest will provide to CLEC the facility and equipment specifications necessary to enable CLEC to obtain compatible facilities and equipment.

10.5.2.8 A Reseller CLECs' end user Customers may use the same dialing pattern to access Directory Assistance Service as used by Qwest's end user Customers (i.e., 411, 1+411, or 1+NPA+555-1212).

10.5.2.9 A facility-based CLEC may choose to have its end users dial a unique number or use the same dialing pattern as Qwest end users to access Qwest Directory Assistance operators.

10.5.2.10 Qwest will timely enter into its Directory Assistance Database updates of CLEC's listings. Qwest will implement quality assurance procedures such as random testing for listing accuracy. Qwest will identify itself to end users calling its DA service provided for itself either by company name or operating company name or operating company number so that end users have a means to identify with whom they are dealing.

10.5.2.10.1 In accordance with the Audit Section of the Agreement, CLEC may request a comprehensive audit of Qwest's use of CLEC's directory assistance listings. In addition to the terms specified in the Agreement, the following also apply: as used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the directory assistance listings provided hereunder and such other Party's performance of its obligations under this Amendment. CLEC may perform up to two (2) audits per twelve (12) month period commencing with the effective date of this Amendment of Qwest's use of CLEC's directory assistance listings in Qwest's Directory Assistance Service. CLEC shall be entitled to "seed" or specially code some or all of the directory assistance listings that it provides hereunder in order to trace such information during an Audit and ensure compliance with the disclosure and use restrictions set forth in this Amendment.

10.5.2.11 Qwest shall use CLEC's Directory Assistance listings supplied to Qwest by CLEC under the terms of this Amendment solely for the purposes of providing Directory Assistance Service and for providing Directory Assistance List Information to Directory Assistance providers, and for other lawful purposes, except that CLEC's directory assistance listings supplied to Qwest by CLEC and marked as nonpublished or nonlisted listings shall not be used for marketing purposes.

### 10.5.3 Rate Elements

The following rate elements apply to Directory Assistance Service and are contained in Exhibit A of this Amendment.

10.5.3.1 A per call rate is applicable for Local Directory Assistance and National Directory Assistance Service selected by CLEC.

10.5.3.2 A nonrecurring setup and recording fee will be charged for establishing each Call Branding option. A nonrecurring charge to load CLEC's brand in each Switch is also applicable. Such nonrecurring fees must be paid before service commences.

10.5.3.3 A per call rate is applicable for Call Completion Link.

### 10.5.4 Ordering Process

CLEC will order Directory Assistance Service by completing the questionnaire entitled "Qwest Operator Services/Directory Assistance Questionnaire for Local Service Providers." This questionnaire may be obtained from CLEC's Qwest account manager.

### 10.5.5 Billing

10.5.5.1 Qwest will track and bill CLEC for the number of calls placed to Qwest's Directory Assistance service by CLEC's end users as well as for the number of requests for Call Completion Link.

10.5.5.2 For purposes of determining when CLEC is obligated to pay the per call rate, the call shall be deemed made and CLEC shall be obligated to pay when the call is received by the Operator Services Switch. An end user may request and receive no more than two (2) telephone numbers per Directory Assistance call. Qwest will not credit, rebate or waive the per call charge due to any failure to provide a telephone number.

10.5.5.3 Call Completion Link will be charged at the per call rate when the end user completes the required action (i.e., "press the number one," "stay on the line," etc.).

## 10.6 Directory Assistance List

### 10.6.1 Description

10.6.1.1 Directory Assistance List (DA List) Information consists of name, address and telephone number information for all end users of Qwest and other LECs that are contained in Qwest's Directory Assistance Database and, where available, related elements required in the provision of Directory Assistance Service to CLEC's end users. No prior authorization from CLEC shall be required for Qwest to sell, make available, or release CLEC's end user Directory Assistance listings to Directory Assistance providers. In the case of end users

who have non-published listings, Qwest shall provide the end user's local numbering plan area (NPA), address, and an indicator to identify the non-published status of the listing to CLEC; however, Qwest will not provide the non-published telephone number.

10.6.1.2 Qwest will provide DA List Information via initial loads and daily updates either by means of a magnetic tape or Network Data Mover (NDM) or as otherwise mutually agreed upon by the Parties. Qwest will provide all changes, additions or deletions to the DA List Information overnight on a daily basis. The Parties will use a mutually agreed upon format for the data loads.

10.6.1.3 DA List Information shall specify whether the Qwest subscriber is a residential, business, or government subscriber, and the listings of other Carriers will specify such information where it has been provided on the Carrier's listing order.

10.6.1.4 In the event CLEC requires a reload of DA List Information from Qwest's database in order to validate, synchronize or reconcile its database, a reload will be made available according to the rate specified in Exhibit A.

10.6.1.5 Qwest and CLEC will cooperate in the designation of a location to which the data will be provided.

## 10.6.2 Terms and Conditions

10.6.2.1 Qwest grants to CLEC, as a competing provider of telephone Exchange Service and telephone toll service, access to the Directory Assistance List Information: Option 1) solely for the purpose of providing Directory Assistance Services or Option 2) for purposes of providing Directory Assistance Services and for other lawful purposes, except that listings included in Qwest's Directory Assistance List information and marked as nonpublished or nonlisted listings, or listings marked with an "omit from lists" indicator shall not be used for marketing purposes, subject to the terms and conditions of this Amendment. CLEC will advise Qwest when it orders Qwest's Directory Assistance List Information, whether it chooses Option 1 or 2. As it pertains to the use of Directory Assistance List Information in this Amendment, "Directory Assistance Service" shall mean the provision, by CLEC via a live operator or a mechanized system, of telephone number and address information for an identified telephone service end user or the name and/or address of the telephone service end user for an identified telephone number. Should CLEC cease to be a Telecommunications Carrier, a competing provider of telephone Exchange Service or telephone toll service, this access grant automatically terminates.

10.6.2.1.1 Qwest shall make commercially reasonable efforts to ensure that listings belonging to Qwest retail end users provided to CLEC in Qwest's DA List Information are accurate and complete. All third party DA List Information is provided AS IS, WITH ALL FAULTS. Qwest further represents that it shall review all of its end user listings information provided to CLEC, including end user requested restrictions on use, such

as nonpublished and nonlisted restrictions.

10.6.2.2 CLEC will obtain and timely enter into its Directory assistance database daily updates of the DA List Information, will implement quality assurance procedures such as random testing for directory assistance listing accuracy, and will identify itself to end users calling its DA service either by company name or operating company number so that end users have a means to identify with whom they are dealing.

10.6.2.3 Reserved for Future Use.

10.6.2.4 Qwest shall retain all right, title, interest and ownership in and to the DA Listing Information it provides hereunder. CLEC acknowledges and understands that while it may disclose the names, addresses, and telephone numbers (or an indication of non-published status) of Qwest's end users to a third party calling its Directory Assistance for such information, the fact that such end user subscribes to Qwest's Telecommunications Services is confidential and proprietary information and shall not be disclosed to any third party.

10.6.2.5 CLEC shall not sublicense, copy or allow any third party to access, download, copy or use the DA List Information, or any portions thereof, or any information extracted therefrom. Each Party shall take commercially reasonable and prudent measures to prevent disclosure and unauthorized use of Qwest's DA List Information at least equal to the measures it takes to protect its own confidential and proprietary information, including but not limited to implementing adequate computer security measures to prevent unauthorized access to Qwest's DA List Information when contained in any database.

10.6.2.5.1 Unauthorized use of Qwest's DA List information, or any disclosure to a third party of the fact that an end user, whose listing is furnished in the DA list, subscribes to Qwest's, another Local Exchange Carrier's, Reseller's or CMRS's Telecommunications Services shall be considered a material breach of this Amendment and shall be resolved under the Dispute Resolution provisions of the Agreement.

10.6.2.6 Within five (5) Days after the expiration or earlier termination of the Agreement, CLEC shall (a) return and cease using any and all DA List Information which it has in its possession or control, (b) extract and expunge any and all copies of such DA List Information, any portions thereof, and any and all information extracted therefrom, from its files and records, whether in print or electronic form or in any other media whatsoever, and (c) provide a written certification to Qwest from an officer that all of the foregoing actions have been completed. A copy of this certification may be provided to third party Carriers if the certification pertains to such Carriers' DA List Information contained in Qwest's database.

10.6.2.7 CLEC is responsible for ensuring that it has proper security measures in place to protect the privacy of the end user information contained within the DA List Information. CLEC must remove from its database any

telephone number for an end user whose listing has become non-published when so notified by Qwest.

10.6.2.8 Audits -- In accordance with the Audit Section of the Agreement, Qwest may request a comprehensive audit of CLEC's use of the DA List Information. In addition to the Audit terms specified in the Agreement, the following also apply:

10.6.2.8.1 As used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the DA List Information provided hereunder and such other Party's performance of its obligations under this Amendment. Either Party (the "Requesting Party") may perform up to two (2) Audits per 12-month period commencing with the effective date of this Amendment. Qwest shall be entitled to "seed" or specially code some or all of the DA List Information that it provides hereunder in order to trace such information during an Audit and ensure compliance with the disclosure and use restrictions set forth in Section 10.6.2.2 above.

10.6.2.8.2 All paper and electronic records will be subject to audit.

10.6.2.9 CLEC recognizes that certain Carriers who have provided DA List Information that is included in Qwest's database may be third party beneficiaries of the Agreement for purposes of enforcing any terms and conditions of the Agreement other than payment terms with respect to their D A List Information.

10.6.2.10 Qwest will provide a non-discriminatory process and procedure for contacting end users with non-published telephone numbers in emergency situations for non-published telephone numbers that are included in Qwest's Directory Assistance Database. Such process and procedure will be available to CLEC for CLEC's use when CLEC provides its own directory assistance and purchases Qwest's Directory Assistance List product.

### 10.6.3 Rate Elements

Recurring and nonrecurring rate elements for DA List Information are described below and are contained in Exhibit A of this Amendment.

10.6.3.1 Initial Database Load -- A "snapshot" of data in the Qwest DA List Information database or portion of the database at the time the order is received.

10.6.3.2 Reload -- A "snapshot" of the data in the Qwest DA List Information database or portion of the database required in order to refresh the data in CLEC's database.

10.6.3.3 Daily Updates -- Daily change activity affecting DA List Information in the listings database.

10.6.3.4 One-Time Set-Up Fees -- Charges for special database loads.

10.6.3.5 Output Charges -- Media charges resulting from either the electronic transmission or tape delivery of the DA List Information, including any shipping costs.

#### 10.6.4 Ordering

10.6.4.1 CLEC may order the initial DA List Information load or update files for Qwest's local Exchange Service areas in its 14 state operating territory or, where Technically Feasible, CLEC may order the initial DA List Information load or update files by Qwest White Page Directory Code or NPA.

10.6.4.2 Special requests for data at specific geographic levels (such as NPA) must be negotiated in order to address data integrity issues.

10.6.4.3 CLEC shall use the Directory Assistance List Order Form found in the PCAT.

## ATTACHMENT 2

### 10.7 Toll and Assistance Operator Services

#### 10.7.1 Description

10.7.1.1 Toll and assistance operator services are a family of offerings that assist end users in completing EAS/local and long distance calls. Qwest provides non-discriminatory access to Qwest operator service centers, services and personnel.

10.7.1.1.1 Local Assistance. Assists CLEC end users requesting help or information on placing or completing EAS/local calls, connects CLEC end users to home NPA directory assistance, and provides other information and guidance, including referral to the business office and repair, as may be consistent with Qwest's customary practice for providing end user assistance.

10.7.1.1.2 IntraLATA Toll Assistance. Qwest will direct CLEC's end user to contact its provider to complete InterLATA toll calls. Nothing in this Amendment is intended to obligate Qwest to provide any toll services to CLEC or CLEC's end users.

10.7.1.1.3 Emergency Assistance. Provide assistance for handling a CLEC end user's EAS/local and IntraLATA toll calls to emergency agencies, including but not limited to, police, sheriff, highway patrol and fire. CLEC is responsible for providing Qwest with the appropriate emergency agency numbers and updates.

10.7.1.1.4 Busy Line Verification (BLV) is performed when a calling party requests assistance from the operator bureau to determine if the called line is in use. The operator will not complete the call for the calling party initiating the BLV inquiry. Only one BLV attempt will be made per call, and a charge shall apply.

10.7.1.1.5 Busy Line Interrupt (BLI) is performed when a calling party requests assistance from the operator to interrupt a telephone call in progress. The operator will interrupt the busy line and inform the called party that there is a call waiting. The operator will not connect the calling and called parties. The operator will make only one BLI attempt per call and the applicable charge applies whether or not the called party releases the line.

10.7.1.1.6 Quote Service – Provide time and charges to hotel/motel and other CLEC end users for guest/account identification.

## 10.7.2 Terms and Conditions

10.7.2.1 For facility-based CLECs, Interconnection to Qwest's Operator Services Switch is Technically Feasible at two (2) distinct points on the Trunk Side of the Switch. The first connection point is an operator services trunk connected directly to the Qwest Operator Services host Switch. The second connection point is an operator services trunk connected directly to a remote Qwest Operator Services Switch.

10.7.2.2 Trunk Provisioning and facility ownership must follow Qwest guidelines.

10.7.2.3 In order for CLEC to use Qwest's operator services as a facility-based CLEC, CLEC must provide an operator service trunk between CLEC's end office and the Interconnection point on the Qwest operator services Switch for each NPA served.

10.7.2.4 The technical requirements of operator service trunk are covered in the Operator Services Systems Generic Requirement (OSSGR), Telcordia document FR-NWT-000271, Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.

10.7.2.5 Each Party's operator bureau shall accept BLV and BLI inquiries from the operator bureau of the other Party in order to allow transparent provision of BLV/BLI traffic between the Parties' networks.

10.7.2.6 CLEC will provide separate no-test trunks (not the local/IntraLATA trunks) to the Qwest BLV/BLI hub or to the Qwest Operator Services Switches.

10.7.2.7 Qwest will perform Operator Services in accordance with operating methods, practices, and standards in effect for all its end users. Qwest will respond to CLEC's end user calls to Qwest's operator services according to the same priority scheme as it responds to Qwest's end user calls. Calls to Qwest's operator services are handled on a first come, first served basis, without regard to whether calls are originated by CLEC or Qwest end users.

10.7.2.8 Qwest will provide operator services to CLEC where Technically Feasible and facilities are available. Qwest may from time-to-time modify and change the nature, extent, and detail of specific operator services available to its retail end users, and to the extent it does so, Qwest will provide forty-five (45) Days) Days advance written notice to CLEC of such changes.

10.7.2.9 Qwest shall maintain adequate equipment and personnel to reasonably perform the Operator Services. CLEC shall provide and maintain the facilities necessary to connect its end users to the locations where Qwest provides the Operator Services and to provide all information and data needed or reasonably requested by Qwest in order to perform the Operator Services.

10.7.2.10 Call Branding is an optional service available to CLEC. Call Branding announces CLEC's name to CLEC's end user at the start of the call and at the completion of the call. If CLEC selects the Call Branding option, Qwest will provide Call Branding to CLEC where Technically Feasible.

a) Front End Brand – Announces CLEC's name to CLEC's end user at the start of the call. There is a nonrecurring charge to setup and record the Front End Brand message.

b) Back End Brand – Announces CLEC's name to CLEC's end user at the completion of the call. There is a nonrecurring charge to setup and record the Back End Brand message.

10.7.2.11 Call branding for toll and operator services will entail recording and setup of a brand message. Qwest will record CLEC's branded message. Dedicated interoffice facilities will be required.

10.7.2.12 Call Branding also entails a nonrecurring charge to load CLEC's branded message in each Switch.

10.7.2.13 CLEC's end users may dial "0" or "0+" to access Qwest operator services. A facility-based CLEC may choose to have its end users access Qwest operators by dialing a unique number or by using the same dialing pattern as Qwest end users.

### 10.7.3 Rate Elements

Qwest toll and assistance operator services are offered under two (2) pricing options. Option A offers a per message rate structure. Option B offers a work second and a per call structure. Applicable recurring and nonrecurring rate elements are detailed below and in Exhibit A of this Amendment.

#### 10.7.3.1 Option A - Operator Services Rate Elements

10.7.3.1.1 Operator Handled Calling Card – For each completed calling card call that was dialed 0+ where the operator entered the calling card number.

10.7.3.1.2 Machine Handled Calling Card – For each completed call that was dialed 0+ where the end user entered the required information, such as calling card number.

10.7.3.1.3 Station Call – For each completed station call, including station sent paid, collect, third number special Billing or 0+ calling card call.

10.7.3.1.4 Person Call – For each completed person to person call regardless of the Billing used by the end user.

10.7.3.1.5 Connect to Directory Assistance – For each operator

placed call to directory assistance.

10.7.3.1.6 Busy Line Verify – For each call where the operator determines that conversation exists on a line.

10.7.3.1.7 Busy Line Interrupt – For each call where the operator interrupts conversation on a busy line and requests release of the line.

10.7.3.1.8 Operator Assistance – For each EAS/local call, whether completed or not, that does not potentially generate an operator surcharge. These calls include, but are not limited to: calls given the DDD rate because of transmission problems; calls where the operator has determined there should be no charge, such as Busy Line Verify attempts where conversation was not found on the line; calls where the end user requests information from the operator and no attempt is made to complete a call; and calls for quote service.

10.7.3.1.9 "Completed call" as used in this Amendment shall mean that the end user makes contact with the location, telephone number, person or extension designated by the end user.

#### 10.7.3.2 Option B - Per Work Second and Computer Handled Calls

10.7.3.2.1 Operator Handled - CLEC will be charged per work second for all calls originating from its end users and facilities that are routed to Qwest's operator for handling. Work second charging begins when the Qwest operator position connects with CLEC's end user and terminates when the connection between the Qwest operator position and CLEC's end user is terminated.

10.7.3.2.2 Machine Handled - calls that are routed without operator intervention. Machine handled calls include, but are not limited to, credit card calls where the end user enters the calling card number, calls originating from coin telephones where the computer requests deposit of coins, additional end user key actions, recording of end user voice, etc.

10.7.3.3 Call Branding Nonrecurring Charge. Qwest will charge to CLEC a nonrecurring setup and recording fee for establishing Call Branding and loading each Switch with CLEC's branded message. CLEC must pay such nonrecurring charges prior to commencement of the service. The nonrecurring set-up and recording charge will apply each time the CLEC's brand message is changed. The nonrecurring charge to load the switches with the CLEC's branded message will be assessed each time there is any change to the Switch.

### 10.7.4 Ordering Process

CLEC will order Operator Services by completing the "Qwest Operator Services/Directory Assistance Questionnaire for Local Service Providers." Copies of this questionnaire may be obtained from CLEC's designated Qwest account manager.

## 10.7.5 Billing

10.7.5.1 Qwest will track usage and bill CLEC for the calls placed by CLEC's end users and facilities.

10.7.5.2 Qwest will compute CLEC's invoice based on both Option A (Price Per Message) and Option B (Price Per Work Second and Computer Handled Calls). Qwest will charge CLEC whichever option results in a lower charge.

10.7.5.3 If, due to equipment malfunction or other error, Qwest does not have available the necessary information to compile an accurate Billing statement, Qwest may render a reasonably estimated bill, but shall notify CLEC of the methods of such estimate and cooperate in good faith with CLEC to establish a fair, equitable estimate. Qwest shall render a bill reflecting actual billable quantities when and if the information necessary for the Billing statement becomes available.

Exhibit A  
Arizona\*

Amendment		Recurring	Non- Recurring	Notes
<b>10.0 Ancillary Services</b>				
<b>10.4 Directory Assistance, Facility Based Providers</b>				
10.4.1	Local Directory Assistance, Per Call	\$0.34		10
10.4.2	National Directory Assistance, per Call	\$0.385		10
10.4.3	Call Branding, Set-Up and Recording-Individual session		\$35,000.00	10
	Call Branding Set-Up & Recording-Shared recording session (minimum 3 customers per session)		\$15,000.00	10
10.4.4	Loading Brand /Per Switch		\$175.00	10
10.4.5	Call Completion Link, per call	\$0.085		
<b>10.5 Directory Assistance List Information</b>				
10.5.1	Initial Database Load, per Listing	\$0.025		10
10.5.2	Reload of Database, per Listing	\$0.02		10
10.5.3	Daily Updates, per Listing	\$0.025		10
10.5.4	One-time Set-Up Fee, per Hour		\$82.22	10
10.5.5	Media Charges for File Delivery			
	Electronic Transmission	\$0.001		10
	Tapes (charges only apply if this is selected as the normal delivery medium)	\$30.00		
	Shipping Charges (for tape delivery)		ICB	3
<b>10.6 Toll and Assistance Operator Services, Facility Based Providers,</b>				
10.6.1	Option A – Per Message			
	Operator Handled Calling Card	\$1.45		10
	Machine Handled Calling Card	\$0.60		10
	Station Call	\$1.50		10
	Person Call	\$3.50		10
	Connect to Directory Assistance	\$0.75		10
	Busy Line Verify, per Call	\$0.72		
	Busy Line Interrupt	\$0.87		
	Operator Assistance, per Call	\$0.87		10
10.6.2	Option B – Per Operator Work Second and Computer Handled Calls			
	Operator Handled, per Operator Work Second	\$0.181		10
	Machine Handled, per Call	\$0.25		10
	Call Branding, Set-Up & Recording		\$10,500.00	10
	Loading Brand/Per Switch		\$175.00	10

NOTES:

\* Unless otherwise indicated, all rates are pursuant to Arizona Corporation Commission Order Number 60635 in Cost Docket (Consolidated Arbitration) Number U-3021-96-448, effective January 30, 1998.

[3] ICB, Individual Case Basis pricing.

[10] Market-based rates.

# EXHIBIT S-7

# EXHIBIT S-8

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF MINNESOTA

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Phyllis Reha	Commissioner

In the Matter of a Commission Investigation Into  
Qwest's Compliance with Section 271 of the  
Telecommunications Act of 1996 that the  
Requested Authorization is Consistent with the  
Public Interest, Convenience and Necessity

PUC Docket No. P421/CI-01-1373  
OAH Docket No. 6-2500-14488-2

AFFIDAVIT OF  
F. LYNNE POWERS

I, F. Lynne Powers, being duly sworn, state:

1. I am the Executive Vice President of Customer Operations for Eschelon Telecom, Inc. ("Eschelon"). My areas of responsibility include provisioning, repair, and customer care.

UNE-Platform

2. In approximately mid-May of 2000, Eschelon began efforts to prepare to order from Qwest UNE-Platform ("UNE-P") lines. UNE-P is a combination of the following unbundled network elements ("UNEs"): loop, switching, and transport. At that time, Qwest did not provide information about feature availability with UNE-P on its web-site. Feature information is critical to developing and marketing a product. It took more than four months for Eschelon to extract that information from Qwest. When Eschelon finally obtained a list of available features, the list was incomplete and unclear.

3. In the absence of receiving a definitive list of available features for UNE-P from Qwest and in the process of compiling its own list of Universal Service Ordering Codes ("USOCs") for ordering, Eschelon attempted to test availability of various features and USOCs by placing trial orders (using employee lines) in Minnesota. Eschelon wanted to submit trial orders in additional states as well. But, at that time, Qwest would not accept orders for UNE combinations anywhere in its territory, except Minnesota, without a contract amendment. Qwest took this position even though Eschelon has an interconnection agreement with Qwest in every one of the states in which it operates<sup>1</sup> that

<sup>1</sup>Eschelon does business within Qwest territory in Arizona, Colorado, Minnesota, Oregon, Utah, and Washington. Other than the information relating to the Minnesota UNE-P trial orders (and certain repair information discussed below), the information in this Affidavit (including that relating to UNE-E/UNE-Star) applies in each of these states.

requires Qwest to provide UNEs "in combination" in accordance with the Act, FCC rules, and state law.<sup>2</sup> In those states, Eschelon has opted in to interconnection agreements of AT&T Communications, Inc. ("AT&T"). Therefore, Eschelon, AT&T, and other opt-in Competitive Local Exchange Carriers ("CLECs") should have been able to order UNE combinations pursuant to the terms of their existing interconnection agreements with Qwest. But, for many months, the only state in Qwest's territory where Qwest would process orders for UNE combinations without a contract amendment was Minnesota. Although Qwest had previously required a contract amendment in Minnesota as well, Qwest changed its position after the Minnesota Public Utilities Commission issued a decision requiring Qwest to provide UNE Combinations.<sup>3</sup>

4. In Minnesota, where Qwest allowed Eschelon to submit UNE-P orders, the UNE-P trial orders resulted in denial and loss of features, including Qwest deletion of features without notice to Eschelon; unclear and changing processes; and customer-affecting service problems. Minnesota UNE-P trial order customers experienced:

- complete outages, with no dial tone, for a day or more
- inability to call out locally
- inability to place long distance calls
- loss of features
- inability to forward calls between central offices

5. The problems were too numerous to launch a product offering using UNE-P at that time, because doing so would not only have caused Eschelon to incur unnecessary expenses and delays but also exposed Eschelon's end-user customers to these problems. Eschelon also could not afford to leave its Off-Net<sup>4</sup> customer base on resale, which was prohibitively expensive. UNE combinations not only have lower prices than resale, but also they allow CLECs to collect switched access payments that, with resale, go to the incumbent. Although Eschelon had a contractual right to the lower

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<sup>2</sup> See Eschelon-Qwest Interconnection Agreements: AZ, Part A, ¶ 21 & Att. 3, ¶¶ 3.3 & 18.1; CO Part A, ¶ 8.1 & Att. 3, ¶¶ 2.4 & 15.1; MN, Part A, ¶ 20 & Att. 3, ¶ 14.1; OR, Part A, ¶¶ 19 & 36 & Att. 3, ¶ 14.1; UT, Part A, ¶ 21 & Att. 3, ¶¶ 3.3 & 18.1; WA, Part A, ¶ 21.1 & Att. 3, ¶¶ 1.2.2 & 18.1; see, e.g., Agreement for Local Wireline Network Interconnection and Service Resale Between Advanced Telecommunications, Inc. and U S WEST Communications, Inc., for the State of Arizona, Agreement No. CDS-000106-0212; Decision No. 62489 (Jan. 20, 2000) ("Agreement"). The Arizona Agreement, for example, deals specifically with issues such as the definition of "Combinations," see *id.* Part A, p. 4; cooperative testing of combinations, see *id.* ¶ Att 3, Para 18.1; service order process requirements for combinations, see *id.* Att. 5, ¶ 2.2.2.1, and other issues.

<sup>3</sup> See Order After Remand, *In re. the Federal Court Remand of Issues Proceeding from the Interconnection Agreements Between U S WEST Communications, Inc. and AT&T, MCI, MFS, and AT&T Wireless*, Docket No. P-421/CI-99-786 (March 14, 2000) ("MN Order After Remand").

<sup>4</sup> Eschelon has its own switches for providing voice service. When using its switches to serve its customers, Eschelon orders collocation, loops, etc., from Qwest. In some cases (particularly when a customer is outside of the area served by Eschelon's switch), Eschelon also orders UNE-E, UNE-P, or resale from Qwest to serve customers. Eschelon often refers to customers and lines served through Eschelon's own switching facilities as "On-Net" or "On-Switch" and customers and lines served through UNE-E, UNE-P, or resale as "Off-Net."

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prices and the access payments, it found that the UNE-P combination was not, as a practical matter, available from Qwest at an acceptable level of quality.

### UNE-Eschelon

6. Eschelon raised these concerns with Qwest.<sup>5</sup> On November 15, 2000, Eschelon and Qwest executed an interconnection agreement amendment pursuant to which Eschelon could order another UNE combination, or "Platform," which was also a combination of loop, switching, and transport. See Exhibit 1. Qwest initially referred to this product as UNE-Eschelon ("UNE-E"). Qwest presented UNE-E as being like UNE-P, except generally for pricing that includes a flat rate up to a certain number of minutes;<sup>6</sup> the ability to order Qwest voice messaging and Digital Subscriber Line ("DSL")<sup>7</sup> (at retail rates); and inclusion of Eschelon's existing resale base customers in the Platform product.<sup>8</sup> Qwest said that, with UNE-E, Eschelon would be able to collect the switched access revenues that are unavailable with resale. Although switched access is also available with UNE-P, the problems described above with UNE-P remained unsolved. Instead of addressing those problems at that time, Qwest promised Eschelon that it would move Eschelon's base of resale customers to UNE-E. To avoid the provisioning problems associated with submitting separate Local Service Requests ("LSRs") for each line being converted from resale to a UNE combination -- such as the problems Eschelon had experienced when attempting to order UNE-P -- Qwest said that it would develop a tool to do the work on its side. With this tool, Qwest would convert Eschelon's resale base to UNE-E, without the need for individual LSRs from Eschelon and without adverse customer impact.

7. Qwest said that it would not be able to complete the conversion of Eschelon's resale base to UNE-E for a few months. Therefore, in the short-term, Qwest told Eschelon to order UNE-E through the existing resale process. See, e.g., Exhibit 2 (email from Judy Rixe, Qwest's then Account Manager for Eschelon). Qwest said that it would continue to bill Eschelon at the resale rates through the existing resale billing process. See *id.* Qwest said that Qwest Finance would then compare the end-of-month billed revenues to the UNE-E rates and pay Eschelon the difference. See *id.* After the

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<sup>5</sup> In addition, Eschelon described these problems in 55-page comments filed with the Arizona Corporation Commission on September 21, 2000. See Eschelon's Comments Addressing UNE Combinations, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Docket No. T-00000A-97-0238 (Sept. 21, 2000) ("Arizona UNE-P Comments"); see also Verification of Garth Morrisette (same).

<sup>6</sup> See Exhibit 1 (UNE-E Amendment, Att. 3.2, pp. 9-10). Although UNE-E was supposed to be distinguishable from UNE-P because it is flat-rated, Eschelon later learned that UNE-P-Centrex is also flat-rated. See <http://www.qwest.com/wholesale/pcat/unepcentrex.html> ("Until Qwest systems are able to record and bill actual usage information, Shared Transport Originating MOU and Local Switching Originating MOU will be billed at a flat monthly rate based on assumed MOU."). See excerpt attached as Exhibit 3.

<sup>7</sup> Although Qwest now offers Qwest DSL with UNE-P lines (see Exhibit 8), at that time Qwest's position was that a CLEC could not order DSL with UNE-P lines.

<sup>8</sup> In the agreement, Qwest did not place limits on the conversion of Eschelon's resale base to the new "Platform." See Exhibit 1. Later, Qwest began imposing limitations, such as excluding certain features and lines from the conversion.

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first few months, however, the ordering and billing processes were supposed to change to allow Eschelon to order UNE-E (not resale) and receive accurate UNE-E bills. *See, e.g., id.* (“Develop billing process for flat-rated UNE-Deal”). Although Qwest later pushed out its target dates for the promised changes, Qwest continued to represent that it was proceeding with changes to allow accurate UNE-E ordering and billing. *See, e.g., Exhibit 4* (email and memorandum from Freddi Pennington of Qwest).

### UNE-Star

8. Shortly after agreeing to provide UNE-E to Eschelon, Qwest began to refer to UNE-E as “UNE-Star.” *See, e.g., Exhibit 2* (subject line of “UNE-Star Implementation”).<sup>9</sup> Qwest said that it had formed an internal team of more than 35 Qwest representatives to implement the “new product.” *See, e.g., id.* Qwest referred to these representatives as its “UNE-STAR Implementation team.” *See, e.g., Exhibit 4.* In many meetings, Qwest referred to UNE-Star as a Qwest “product.” Sometimes, Qwest applies a one-size-fits-all approach to “products” that does not account for contractual differences. Eschelon agreed to the UNE-E interconnection agreement amendment, *see Exhibit 1*, based on Qwest’s representations that UNE-E would have certain characteristics (such as feature availability and avoiding adverse customer impact). Eschelon expressed concern that it needed visibility into, and participation in, the UNE-Star product implementation to ensure that the product was implemented consistent with the promises made to Eschelon. Eschelon also believed that it could provide a valuable service to Qwest by providing CLEC input that would improve the product. But, Qwest did not allow Eschelon to meet with Qwest’s UNE-STAR Implementation team. Instead, Eschelon had to press Qwest service and product managers, as well as Information Technologies (“IT”) personnel, to provide information and updates to Eschelon about UNE-Star. *See, e.g., Exhibits 4 & 5.* Qwest said that UNE-E and the UNE-Star product were the same. *See, e.g., Exhibit 5.*

9. The process experienced many delays. *See, e.g., Exhibits 4 & 5.* In the meantime, Eschelon had to devote resources to dealing with the UNE-E/UNE-Star problems that Qwest had agreed to solve. Now, I understand that Qwest has testified in the cost case that “we don’t have a product anywhere called UNE-Star” and that “you’re never going to see any offering for like a UNE-Star if that’s the name of an agreement. It’s not the name of one of our products.”<sup>10</sup> These statements cause me to ask whether

<sup>9</sup>Qwest refers to the same product as “UNE Eschelon” (“UNE-E”) when provided to Eschelon; as “UNE-McLeod” (“UNE-M”) when provided to McLeodUSA; and otherwise as “UNE-Star.” *See* Qwest Corporation’s Verified Answer to the Complaint of the Minnesota Department of Commerce, *In re. Complaint of the Minnesota Department of Commerce Against Qwest Corporation*, Docket No. P-421/C-02-197, ¶ 7, p. 12 (March 1, 2002) [“Qwest Verified Answer”] (excerpt attached as Exhibit 6).

<sup>10</sup> Cross-Examination of Kathryn Malone, Transcript Vol. 7, page 104, lines 23-24 & page 105, lines 5-7 (May 21, 2001), In the Matter of the Commission’s Review and Investigation of Qwest’s Unbundled Network Element (UNE) Prices, PUC Docket No. P-421/CI-01-1375. *See* excerpt attached as Exhibit 7. Ms. Malone testified that she is “Manager – Wholesale Markets” and that she is “responsible for Wholesale advocacy surrounding interconnection and resale of products and services” at Qwest. *See* Direct Testimony of Kathryn Malone, p. 2, lines 4-6 (March 18, 2002; same docket); excerpt attached as part of Exhibit 7. According to Ms. Rixe, “Wholesale Advocacy” and “Wholesale Marketing” were represented on the Qwest internal UNE-Star implementation team. *See* Exhibit 2.

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Qwest ever intended to deliver on its promises to implement UNE-E/UNE-Star long-term product improvements, or whether Qwest was simply delaying Eschelon and causing Eschelon to expend resources on a claimed product that Qwest did not intend to deliver as promised.

10. As discussed, one of the advantages of the November 15, 2000, interconnection agreement amendment was supposed to be that Qwest would convert Eschelon's base from resale to UNE-E/UNE-Star without the necessity of Eschelon placing individual LSRs to convert each customer. Qwest never completed the physical conversion to UNE-E/UNE-Star, however, and the UNE-E/UNE-Star product suffers from its own problems. Now, a year and a half later, Eschelon has had to begin, at this late date, the process of placing individual LSRs to convert customers to UNE-P, due to billing, provisioning, and pricing issues with UNE-E/UNE-Star.<sup>11</sup> Although Eschelon has been entitled under its interconnection agreement to UNE-P pricing since before 2000, Eschelon will not receive the benefits of UNE-P pricing until the lines are converted. I estimate that it will take a minimum of seven months and eighteen full-time employees, as well as additional resources, to complete the conversion from UNE-E/UNE-Star to UNE-P. I have already hired 18 people for this purpose. Because we are moving a large number of lines to UNE-P, Eschelon must hope that Qwest has been forced to make sufficient improvements in the UNE-P product to allow the transition and the product to work much more smoothly than Qwest's attempt to provision UNE-P in 2000.

11. Although Eschelon has commenced a conversion of many of its lines to UNE-P, the vast majority of Eschelon's Off-Net lines are still priced according to the UNE-E/UNE-Star product. UNE-E/UNE-Star suffers from billing, provisioning, documentation, switched access, reporting, and repair problems.

### Billing

12. Eschelon still receives resale bills for UNE-E/UNE-Star lines, instead of accurate UNE-E/UNE-Star bills. The UNE-E price must be determined to reconcile the resale bills to the UNE-E/UNE-Star price. This was supposed to be an interim process. Qwest said that Eschelon would continue to receive a resale bill until Qwest implemented a process for UNE-E/UNE-Star billing. *See, e.g.*, Exhibit 2. Initially, Qwest estimated that this process would be in place by the first quarter of 2001. But, the process was

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<sup>11</sup> On March 1, 2002, Eschelon and Qwest entered into a Settlement Agreement. (Paragraph 6 of the Settlement Agreement provides that the Settlement Agreement will be filed with the state commissions in states where Eschelon is certified and has an interconnection agreement. Qwest is to take care of the filing.) Paragraph 3(f) provides that Qwest and Eschelon will form a team for the purpose of developing a plan "to convert UNE-E/UNE-Star lines to UNE-P." Eschelon has started to order UNE-P, and the conversion commenced in April and May of 2002. The conversion has not yet been completed. The lines that were expected to convert as a records only change were converted first. Those lines were on common blocks (so Eschelon had to issue only one order for the conversion of a number of lines). The more time-consuming conversions are other 1FB and Centrex business lines to UNE-P. It is early in the conversion process. Some customer-affecting problems have occurred during the migration of these lines. Although the number does not appear to be great at this early stage, each customer-affecting problem is a serious issue for us. Eschelon is continuing to monitor this issue to determine the cause and extent of any problems.

delayed. *See, e.g.*, Exhibit 4. The process is still not in place, and Eschelon continues to receive resale bills for UNE-E/UNE-Star lines today.

### Provisioning

13. Qwest has provisioned the UNE-E/UNE-Star product using a manual process with a known 50% - 70% error rate. From August through October of 2001, Eschelon reviewed service order completion notices to identify order errors and identified an error rate of approximately 50%. Qwest rejected orders in error or removed features without Eschelon's knowledge, and Qwest's translations personnel were unfamiliar with the proper process for translating the UNE-E/Star product in the switch. Many of the errors resulted in adverse end-user customer impact (including repair issues, because the customers did not always experience the impact of the error until some time after the order activity). Eschelon objected to the adverse customer impact and the amount of resources that Eschelon had to expend on dealing with these errors. Eschelon was forced to escalate virtually every problem. In November of 2001, Qwest finally instituted a resource-intensive manual review of the UNE-E/UNE-Star service orders. I attended a meeting during which Toni Dubuque and Chris Siewart of Qwest told Eschelon that Qwest's error rate for UNE-E/UNE-Star service orders was approximately 70%. Qwest has not reported an error rate to Eschelon since then. Although the error rate is high, Qwest's internal review has substantially reduced the number of errors that adversely impact end-user customers. Some customer-affecting problems still occur, however.<sup>12</sup>

14. Eschelon was experiencing even more provisioning problems when first using UNE-E/UNE-Star. UNE-E/UNE-Star essentially provides Centrex functionality on a POTS product. Initially, Qwest required Eschelon to order the needed Centrex-line features on a 1FB. Significant problems arose when a customer was moving to UNE-E/UNE-Star from a Qwest 1FB, often because the features did not interact properly. Qwest told Eschelon that these problems would be addressed by ordering the 1FBs with Custom Calling Management System (CCMS). On July 31, 2001, Qwest and Eschelon entered into two amendments to the interconnection agreement (relating separately to recurring and non-recurring charges) to modify the product to allow ordering of 1FBs with CCMS. *See* Exhibit 1. These amendments were supposed to alleviate the provisioning problems without requiring a change in platform, for which Qwest charges higher rates. The majority of Eschelon's UNE-E/UNE-Star lines require use of 1FB with CCMS. After signing the Amendments, Qwest operational personnel informed Eschelon that CCMS is an old product that the product manager actually wanted to retire and that few people at Qwest are knowledgeable about it. This is consistent with the problems that Eschelon has experienced. Both the service order and the translations personnel at Qwest appear untrained to provide the UNE-E/UNE-Star product. Provisioning the product is requiring additional resources and manual effort by both Qwest and Eschelon. Qwest has indicated that UNE-E/UNE-Star orders will never flow through.

<sup>12</sup> Although Eschelon is converting lines to UNE-P, many lines will be on UNE-E for months as that process continues, and some lines will remain on UNE-E after the conversion (such as lines that Qwest deems "ineligible" for UNE-P, such as lines with Qwest voice mail).

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### Documentation

15. Other than some job aids, Qwest has provided little documentation to describe and support the UNE-E/UNE-Star product. UNE-E, or UNE Star, is not identified as one of the available "UNE-P products" in the UNE-P Product Description in Qwest's Product Catalog on Qwest's wholesale website. (See <http://www.qwest.com/wholesale/pcat/unep.html>, p. 1, attached as Exhibit 8.) Because Qwest did not clarify the distinctions between the products in its materials, Qwest's UNE-P announcements have caused confusion. Eschelon representatives, including myself, have had to ask Qwest whether UNE-P announcements (such as Qwest notices regarding systems changes) also apply to UNE-E/UNE-Star and, if so, how they apply. See, e.g., Exhibit 5. As discussed, this was supposed to be a short-term problem, but Qwest has not delivered on all of its promises to implement the UNE-E/UNE-Star product. Some references to UNE-Star can now be found in the systems release notes on Qwest's wholesale web page, but product notifications and training were not developed as indicated (see, e.g., Exhibit 5).

### Switched Access

16. Over a period of time, Eschelon complained to Qwest that Qwest was not providing complete and accurate records from which Eschelon could bill interexchange carriers access charges for UNE-E/UNE-Star customers.<sup>13</sup> As an example, if a Qwest retail customer who has selected Qwest as the intraLATA toll PIC calls an Eschelon UNE-E/UNE-Star local customer, Qwest should provide a record of that intraLATA toll call to Eschelon, so that Eschelon can bill Qwest for terminating access. Eschelon needs an accurate report of switched access minutes of use ("MOU"), so that Eschelon may properly bill interexchange carriers for access. Qwest disputed Eschelon's claims as to the vast majority of the missing minutes. Recently, after Eschelon's agreement not to oppose Qwest in 271 proceedings or bring complaints terminated and Eschelon was allowed to raise this issue publicly, the number of minutes reported to Eschelon jumped significantly and became closer to the number of minutes that Eschelon has maintained it should have been receiving all along.<sup>14</sup> The increase in number of minutes occurred very recently, and Eschelon does not know yet whether all of these minutes will be billable or whether this increase in the number of minutes will continue.

### Reporting

17. Although the conversion from UNE-E (with resale billing) to UNE-P has only recently commenced, Qwest is already reporting Eschelon's UNE-E/UNE-Star lines as UNE-P lines for purposes of the Regional Oversight Committee (ROC) Performance Indicator Definition (PID) data. Previously, Qwest reported these lines as business lines, which is how the lines appear on the bill received by Eschelon. In reviewing the PID

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<sup>13</sup> This is true for On-Net customers as well.

<sup>14</sup> Although Qwest may claim that this is due to a change from use of an interim process to use of Daily Usage Files ("DUF"), Eschelon previously attempted to move off the interim process. Qwest asked Eschelon to return to the interim process, because the long-term process was not working at that time.

data recently, Eschelon found that Qwest's reporting of the lines changed from business lines to UNE-P lines in approximately November of 2001. *See* Exhibit 9.<sup>15</sup> At that time, Qwest changed its reporting not only on a going forward basis, but also retroactively to January of 2001 so that months previously reported as business lines were then reported as UNE-P lines. *See id.* Eschelon was not notified in advance of this change.

18. Qwest is reporting a nearly perfect billing accuracy rate in the PID data. One hundred percent of the UNE-E/UNE-Star rates billed to Eschelon from Qwest for UNE-E/UNE-Star lines, however, are inaccurate, as discussed. If Qwest is able to report a nearly perfect billing rate under these circumstances, a legitimate question exists as to whether the measure accurately reflects the CLEC experience. Additionally, it is unclear whether the PID measures capture the UNE-E/UNE-Star problems that result from service order writing issues. Qwest is manually handling the UNE-E/UNE-Star orders, which means that a Qwest service order writer re-types the order after Eschelon has typed and submitted it. Orders submitted by Eschelon are often not typed correctly by Qwest's order writer. As a result, problems occur, such as features not being provisioned properly. When this happens, an Eschelon customer will report a trouble, because the feature is not working properly. Qwest will close the trouble ticket and indicate "No Trouble Found," because Qwest takes the position that the problem is a service order issue, even though Eschelon's initial order was submitted correctly. Therefore, the trouble does not appear to be captured in the PID data.

#### Repair (DSL)

19. On November 15, 2000, Qwest agreed to provide Qwest DSL (at retail rates) with UNE-E/UNE-Star. *See* Exhibit 1, Att. 3.2, ¶ III(D).<sup>16</sup> Although Qwest allows Eschelon to order DSL with UNE-E/UNE-Star, Qwest is not prepared to deal with DSL repair issues. Qwest has said that it does not have back end system records containing the DSL technical information needed for repair for Centron/Centrex Plus lines with DSL. On June 5, 2002, Qwest Process Specialist Susie Wells confirmed this to Bonnie Johnson and Tina Schiller of Eschelon, who are both in my organization. Ms. Wells said that, when the service order is processed, the critical technical DSL information needed for repair drops off and does not populate in the Qwest back end systems. She said this information is lost and cannot be retrieved. Ms. Wells said that this problem occurs in Qwest's Eastern and Central billing regions. Those regions include Arizona, Colorado, Minnesota, and Utah, of Eschelon's states. This issue is of particular concern to

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<sup>15</sup> Although separate categories are used for other products (such as UNE-P-POTS), separate categories were not created for UNE-E products (such as UNE-E-POTS). *See* Exhibit 9. If Qwest is claiming that it included UNE-E lines with UNE-P lines because there was not a separate category, Qwest could have simply created another category, as it did with UNE-P-POTS.

<sup>16</sup> Since then, Qwest has also made Qwest DSL available with UNE-P, including UNE-P-Centrex (and Centron). *See, e.g.,* <http://www.qwest.com/wholesale/pcat/unepcentrex.html> ("You may convert existing Qwest Digital Subscriber Line (DSL) to UNE-P Centrex with Qwest DSL service. You may also request the installation of new Qwest DSL service on an eligible and existing UNE-P Centrex, subject to loop qualification and availability.") (excerpt attached as part of Exhibit 8). Qwest (Susie Wells) has indicated that the DSL repair problem applies to both UNE-E and UNE-P.



# EXHIBIT S-9

# EXHIBIT S-10

# EXHIBIT S-11

# EXHIBIT S-12

# EXHIBIT S-13

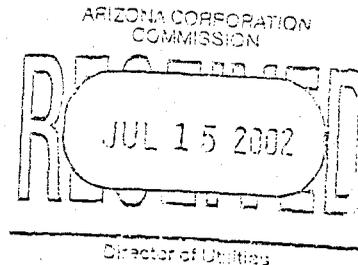
# EXHIBIT S-14



July 10, 2002

*By facsimile & overnight mail*

Commissioner Marc Spitzer  
Commissioner Jim Irvin  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007-2996



Re: AZ Docket Nos. RT-00000F-02-0271, T-00000A-97-0238

Dear Commissioner Spitzer and Commissioner Irvin:

Eschelon Telecom, Inc. ("Eschelon") received a copy of your letters to the Parties in Arizona Docket Numbers RT-00000F-02-0271 and T-00000A-97-0238. Commissioner Spitzer asked the parties to address the differences in the letters submitted by Qwest and Eschelon. Therefore, Eschelon submits this Reply to Qwest's letter to the Commission of June 27, 2002 ("Qwest's June 27 Letter") and the Response of Qwest Corporation to Staff's Request for Comment dated June 27, 2002 ("Qwest's Comments"). Because Qwest criticized Eschelon's previous letter as "unverified rhetoric" (see Qwest's June 27 Letter, p. 1), Eschelon attaches exhibits to further support the information provided.

#### Change Management Process

The Change Management Process ("CMP") is a primary example of an area in which the information provided by Eschelon and Qwest varies greatly. Eschelon has participated in the CMP (formerly "CICMP") for about as long as any Competitive Local Exchange Carrier ("CLEC"). Although Qwest's June 27 Letter and Qwest's Comments characterize CMP as though it were an arm of the 271 process, that is not the case. Eschelon's participation in CMP was not some effort to involve itself in the 271 proceedings. Quite the reverse is true. Long after Eschelon's initial participation in CMP, some 271 issues were interjected into the CMP-Re-design process when Qwest referred issues from the 271 workshops to the CMP Re-design team. Although some 271 issues were discussed, participation in CMP is far from being the same as participation in 271. Issues raised in monthly CMP meetings were not necessarily brought to the 271 proceedings. These include commercial performance issues. Even if another party mentioned some of these issues in 271 proceedings, the participants in those proceedings did not have the benefit of explanation by Eschelon, which had first-hand commercial experience with the problems.

Because CMP is an important issue about which Qwest's filings vary greatly from Eschelon's information, Eschelon will provide additional information from which the Commission may decide which party more accurately and fairly captured the course of events.<sup>1</sup> About CMP, Eschelon said:

Qwest had Eschelon representatives pulled from CMP Re-Design meetings, reviewed but did not disclose written comments by Eschelon on a Qwest status report that were critical of that report, required Eschelon to withdraw a Change Request relating to anti-competitive behavior before it was distributed to other CLECs, and took other steps to inhibit Eschelon's participation in CMP/CMP Re-Design and prevent information from becoming known. Finally, Eschelon's President personally attended CMP monthly and Re-Design meetings to determine whether Qwest's attacks on Eschelon representatives were fair and whether Qwest's representations that CMP issues could be resolved just as well outside of CMP were accurate. Eschelon's President concluded that Qwest's statements were not fair or accurate and the Eschelon's CMP participation was appropriate and necessary to resolve critical business issues. Eschelon's President encouraged Gordon Martin of Qwest to also attend the CMP meetings to gain an understanding of that process and Eschelon's perspective. Mr. Martin did not do so.

See Eschelon's Letter to Commissioner Spitzer, p. 5 (June 24, 2002) ("Eschelon's June 24 Letter"). Qwest did not address Eschelon's first statement from the above quotation about CMP (that Qwest had Eschelon representatives pulled from CMP Re-Design meetings) in Qwest's June 27 Letter or Qwest's Comments. Therefore, Eschelon will respond to the issues Qwest did address first and then return to this issue.

#### Comments on CMP Status Report

Eschelon's second statement about CMP was that Qwest "reviewed but did not disclose written comments by Eschelon on a Qwest status report that were critical of that report." Eschelon's June 24 Letter, p. 5. In response to this statement, Qwest said: "In fact, Eschelon *only* submitted specific comments regarding Qwest's monthly CMP re-design status reports *on a single occasion*." Qwest's June 27 Letter, p. 2. (emphasis added). Enclosed, however, are copies of specific comments regarding Qwest's monthly CMP re-design status submitted by Eschelon to Qwest on *two* occasions. See Exhibits 2 - 3.<sup>2</sup> As Eschelon indicated in Eschelon's June 24 Letter, Eschelon's October 2001 comments are critical of Qwest's status report. See Exhibit 2. Eschelon submitted a copy of Exhibit 2 to Greg Casey, Audrey McKenney, and Dana Filip of Qwest on Friday,

<sup>1</sup> See Exhibit 1 (Verification of F. Lynne Powers).

<sup>2</sup> Qwest states that it attached a copy of Eschelon's redlined version of the status report as an exhibit to the report. See Qwest's June 27 Letter, p. 2. Qwest attached Eschelon's comments with respect to Exhibit 3 (see Exhibit 4), but not Exhibit 2. Qwest also refers to a "high level" email submitted by Eschelon. See Qwest's June 27 Letter, p. 2. A copy of that separate email is attached as Exhibit 5.

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October 5, 2001 and to Andrew Crain on October 9, 2001. *See* Exhibit 2 (cover email to Mr. Crain). Ms. Filip is Qwest's Senior Vice President of Global Service Delivery, and Mr. Crain is a Qwest attorney. Both Ms. Filip and Mr. Crain are Core Team Members of the CMP Re-design Team. *See* Exhibit 6.

After Eschelon submitted its October 2001 comments on Qwest's CMP status report to Qwest, Mr. Crain reportedly mentioned the comments to WorldCom's attorney Thomas Dixon. Mr. Dixon is an active member of the CMP Re-design Team and active participant in the 271 proceedings in several states, including Arizona. Mr. Dixon asked Mr. Crain for a copy of Eschelon's comments. Mr. Crain responded that he was "mixed up." *See* Exhibit 7. Although Mr. Crain had Eschelon's comments in his possession at the time, as shown by Exhibit 2, Mr. Crain told Mr. Dixon that Eschelon had not "sent anything." *See* Exhibit 7. Despite these facts, Qwest represents to the Commission that "Qwest in no way attempted to limit the distribution or use of Eschelon's comments." Qwest's June 27 Letter, p. 3.

With respect to the October 2001 comments, Eschelon management agreed to provide them directly to Qwest management, instead of submitting them by email to the entire CMP Re-design Team. Eschelon did so for two reasons: (1) to show a spirit of cooperation because Qwest had indicated that it would resolve pressing disputes with Eschelon (which it later did not do); and (2) to respond to attacks by Ms. Filip and Ms. McKenney on Eschelon's participation in the CMP Re-design process made with the purpose of decreasing that participation. *See* Exhibit 8; *see also* discussion below. In these situations, Ms. McKenney sometimes characterized Eschelon as a "bad" business partner. Given Qwest's monopoly supplier position, Eschelon did not need to be expressly reminded that Qwest had the ability to punish conduct it deemed to be "bad."

#### Withdrawal of Change Request Relating to Qwest Anti-Competitive Conduct

Eschelon's third statement about CMP was that Qwest "required Eschelon to withdraw a Change Request relating to anti-competitive behavior before it was distributed to other CLECs." Eschelon's June 24 Letter, p. 5. In September of 2001, CLECs participated in a call to discuss CMP issues. One of the issues discussed was whether a Change Request would be the appropriate vehicle to raise with Qwest the topic of anti-competitive conduct. Allegiance Telecom ("Allegiance") said that it had recently experienced instances when it believed Qwest personnel gave false information to Allegiance's customers (such as that the customers' service would go down if they proceeded to converting with Allegiance). Eschelon said it had recently had a similar experience. They agreed that a Change Request would be an appropriate avenue for addressing these issues.

On or about September 25, 2001, Allegiance submitted its initial Change Request relating to this issue. *See* Exhibit 9. Allegiance asked Qwest to establish an improved process for reporting occurrences of anti-competitive behavior, including a single point of

contact, a thorough investigation, an appropriate and timely response to CLECs, and proper training of Qwest personnel to prevent future occurrences. *See id.* Qwest assigned the Change Request number PCC092701-3. *See id.* The initial Change Request contained the name and badge number for the Qwest technician alleged to have made inappropriate statements. Eschelon copied the description of the Change Request, containing this information from Qwest's web page. *See id.* Shortly afterward, Eschelon could not find the Change Request on the web page. Today, a slightly modified version of the Change Request (without the technician-identifying information) is posted on the web page with the archived Change Requests, and it has a "Withdrawn" status. *See Exhibit 10.* Allegiance has indicated that Qwest met with Allegiance in October of 2001 and that Qwest, including Ms. McKenney, asked Allegiance to withdraw the Change Request. Qwest's written Status History for the Change Request (posted on the Qwest web page), however, does not document the meeting between Allegiance and Qwest or the fact that Qwest asked Allegiance to withdraw the Change Request. *See Exhibit 10.*<sup>3</sup>

On September 28, 2001, Eschelon also submitted a Change Request relating to this issue to the Qwest CMP. *See Exhibit 11.* Eschelon described a situation in which a Qwest representative told a customer switching to Eschelon that Eschelon was filing for bankruptcy, which was not a true statement. *See id.* Eschelon asked Qwest to develop a written process to help prevent similar situations in the future. *See id.* Eschelon asked Qwest to include in the process steps for training Qwest employees, reporting the conduct, responding to such situations, and communicating to CLECs on the action taken. *See id.* As in the case of the Allegiance Change Request, Eschelon was seeking a process solution and was not simply reporting an isolated incident.<sup>4</sup> Qwest is required to provide a Change Request number to the requesting CLEC and log that number into its database within two days after receiving a completed CR. *See CMP Document at § 5.3.*<sup>5</sup> Qwest did not do so and said, on October 10, 2001, that it had not provided a number because it was "clarifying this issue internally." *See Exhibit 12.* The documented CMP process does not provide for such a step. Qwest (Ms. McKenney and Ms. Filip) asked Eschelon to withdraw the Change Request from CMP, indicating Qwest did not believe

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<sup>3</sup> When Eschelon later raised an issue relating to the handling of these Change Requests with the CMP Re-design team, Qwest criticized Eschelon for using technician-identifying information in its Change Request and stated that this was one of the reasons that Qwest asked Eschelon to withdraw the Change Request. Eschelon pointed out that this was not the reason given to Eschelon at the time and that Eschelon's Change Request did not contain technician-identifying information. Qwest confused the Change Requests submitted by Allegiance and Eschelon. Eschelon did distribute the Allegiance Change Request to the Core Re-design Team at the later date, but the information provided was taken from Qwest's published web page.

<sup>4</sup> Eschelon remains dissatisfied with Qwest's approach to these issues. Since then, Eschelon has reported to Qwest additional instances of inappropriate comments by Qwest representatives to Eschelon customers. Afterward, Qwest provides, at most, a vague statement that Qwest investigated and will take appropriate steps. Eschelon does not know what steps were taken either in the particular case or to avoid additional instances in the future. If Qwest had accepted the Change Requests of Eschelon and Allegiance, perhaps a better process would be in place by now.

<sup>5</sup> *See* <http://www.qwest.com/wholesale/cmp/re-design.html>.

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that circulating such examples to other CLECs was consistent with the requirement not to oppose Qwest in 271. Eschelon withdrew the Change Request.

Qwest admits that it asked Eschelon to withdraw the Change Request. *See* Qwest's June 27 Letter, p. 3. Qwest claims that its only reason for doing so was that the "issue related to employee performance, rather than a systemic process issue." *Id.* In that case, according to the governing CMP Document and consistent with the handling of other Change Requests at the time, Qwest should have assigned the Change Request a number, posted the Change Request on its wholesale web page, stated in a written response its position that the issue related to employee performance, posted that response (and its request to withdraw) as part of the Status History, and given the Change Request a published status of "Withdrawn." Qwest followed none of these documented procedures.

Moreover, in both the Eschelon and the Allegiance situations, Ms. McKenney was involved in asking a CLEC to withdraw a Change Request. Ms. McKenney is Senior Vice President of Wholesale Business Development at Qwest. Ms. McKenney is not a member of the CMP team or the service management team. Ms. McKenney handled the bulk of the negotiations of unfiled agreements with Eschelon. The reason given by Qwest for its request to withdraw the Change Request does not explain Ms. McKenney's involvement.

#### Other Qwest Steps to Inhibit Eschelon's CMP Participation

Eschelon's fourth statement about CMP was that Qwest "took other steps to inhibit Eschelon's participation in CMP/CMP Re-design and prevent information from becoming known." Eschelon's June 24 Letter, p. 5. Qwest claims that Eschelon's participation in CMP was "full" and "never restricted." *See* Qwest's June 27 Letter, p. 3 & Qwest's Comments, p. 7. In April and June of 2001, however, Ms. McKenney of Qwest was calling Eschelon's President to complain that Eschelon should not be participating in Qwest's CMP meetings. Eschelon attempted to reason with Qwest by explaining Eschelon's business need for participating in CMP and describing the competitive disadvantage to Eschelon if prevented from participating in CMP. *See, e.g.,* Exhibit 13. A comparison of Exhibit 13 with Qwest's June 27 Letter and Qwest's Comments raises the question of why Eschelon had to make these arguments at all, if Eschelon's participation in CMP was as free and uninhibited as suggested by Qwest. Note that Ms. McKenney did not write back to Eschelon and say that there has been some misunderstanding and, of course, Eschelon could participate freely in CMP. That was not Qwest's position.

Qwest's efforts to inhibit Eschelon's CMP participation also extended to CMP Re-design meetings. In October of 2001, for example, Ms. Filip specifically asked Eschelon to refrain from participating in a CMP Re-design Team discussion of the interim process for the Qwest Product Catalog ("PCAT"). *See* Exhibit 8. Despite

Eschelon's strong objections to the PCAT process, Eschelon believed it did so, as Qwest requested. *See id.* Nonetheless, Ms. Filip called Eschelon immediately after that session to complain that Lynne Powers of Eschelon had provided some comments when she should have been silent. The effects of Eschelon's silence on this particular occasion far outlasted the particular meeting. Qwest made many changes to the PCAT with either no notice to CLECs of the particular change or at least no red-lining accompanying a notice to show the nature of the change. By the time Eschelon was able to participate on this issue again, Qwest argued that it was too late to go back and provide information to CLECs on the changes made earlier. Therefore, Eschelon and other CLECs never received red-lined documents showing what had changed for many changes to the PCAT.

Ms. Filip and Ms. McKenney generally took the position that the Escalation Letter barring Eschelon from participating in 271 proceedings<sup>6</sup> also entailed that Eschelon should either be silent or support Qwest's position on other issues in the CMP monthly and Re-design processes. Qwest said that Eschelon had an obligation to deal directly with Qwest executives instead of raising issues in the CMP arena. Eschelon did not believe, however, that Qwest could separately address the types of issues Eschelon raised in those proceedings without affecting other CLECs and that consequently a bilateral approach would be futile. Eschelon provided Qwest management with a summary of Eschelon's pending and recently closed Change Requests to attempt to show the detailed nature of the issues, many of which affected other CLECs, to convince Qwest of Eschelon's legitimate business need to raise in the context of CMP. *See Exhibit 8.* Again, if Qwest was not opposing Eschelon's participation in CMP, the question is raised as to why Eschelon needed to expend resources creating such summaries and trying to persuade Qwest of the need for Eschelon's participation. Qwest verbally opposed Eschelon's arguments. On October 16, 2001, Ms. Filip told me and Eschelon's President on a conference call that Qwest expected Eschelon to not only withdraw the Change Request discussed above but also limit Eschelon's participation in other ways. For example, Ms. Filip asked Eschelon to reduce the number of communications to other CLECs and the testers<sup>7</sup> concerning Qwest's failings (such as by not copying emails to other members of the CMP Re-design Team) and discuss performance issues off line rather than in meetings attended by others.

The arguments with Qwest about the "allowable" level of Eschelon's participation in CMP and CMP Re-design continued for months. Although Qwest appears to praise Eschelon's participation in the CMP process in its letters to the Commission, Qwest does

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<sup>6</sup> *See* Escalations and Business Solutions Letter signed by Qwest and Eschelon (Nov. 15, 2000) ("Escalation Letter") (copy attached as Exhibit 14).

<sup>7</sup> For example, on April 3, 2001, Qwest's attorney Laurie Korneffel told Eschelon that Qwest was "comfortable" that Eschelon's participation in a KPMG question/answer proposal would not violate the agreement not to oppose Qwest in 271, but she said that Qwest "would not be in favor of Eschelon serving as a 'test' CLEC." *See Exhibit 15.* Eschelon had to inquire of Qwest as to the boundaries of the limitations on Eschelon's participation, because it had become clear that Qwest interpreted the 271 limitation more broadly than Eschelon.

not disclose that verbally it took a very different stance in its ongoing discussions with Eschelon at the time. Ms. Filip and Ms. McKenney represented that Eschelon's representatives were causing "havoc" in the CMP monthly and Re-design meetings. *See id.* On January 12, 2002, Eschelon's President summarized Qwest's attempts to decrease Eschelon's CMP participation over the last year as a "constant irritant" to the business relationship. *See Exhibit 16.*

In an attempt to put the issue to rest and prove Eschelon's position, as indicated in Eschelon's June 24 Letter (p. 5), Eschelon's President asked Qwest's Executive Vice President of Global Wholesale Markets Gordon Martin to attend the CMP and Re-design sessions, as Eschelon's President had done. *See id.* Along with Ms. McKenney, Mr. Martin was intimately involved in the negotiations with Eschelon, including negotiation of proposed terms that would limit Eschelon's participation in CMP.<sup>3</sup> Eschelon's President told Mr. Martin that CMP attendance "is the only way that you can determine what goes on as both sides have different views as to what happens at these sessions." *See id.* Exhibit 16 clearly shows that Eschelon's request for Mr. Martin's attendance was made in the context of resolving the issue of Qwest's persistent requests to limit Eschelon's CMP participation. Nonetheless, Qwest's Letter reads as though Eschelon made an unrelated and unprecedented request for upper management to attend CMP meetings. *See Qwest's June 27 Letter, p. 3.* Qwest then represents to the Commission that there "was nothing wrong with Qwest's selecting its representatives who had knowledge about the detail at issue at CMP meetings." *Id.* Eschelon agrees that knowledgeable Qwest employees should attend CMP meetings. This is not, however, the issue that the Commission seeks to investigate and upon which Eschelon commented. The relevant issues are the reason for Eschelon's request that Mr. Martin participate in some CMP meetings and Mr. Martin's (and Ms. McKenney's) conduct in pressing Qwest's efforts to decrease Eschelon's CMP participation without personally observing the Eschelon behavior that Qwest employees characterized as causing "havoc."

#### Excluding Eschelon From CMP Meetings

As mentioned above, Qwest did not address Eschelon's first statement about CMP in its June 24 Letter -- that Qwest "had Eschelon representatives pulled from CMP Re-Design meetings" -- in Qwest's June 27, 2002 Letter or Qwest's Response. It does not do so, even though Qwest directly responded to Eschelon's statements about Qwest's not disclosing comments on a status report and asking Eschelon to withdraw a Change

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<sup>3</sup> Eschelon took the position that, if Qwest was going to impose limitations on Eschelon's CMP participation, Qwest needed to be clear in its expectations, so that Eschelon would not continue to be criticized by Qwest after the fact for alleged infractions. At a meeting on January 8, 2002, Ms. Filip agreed to provide clear, written expectations to Eschelon by January 11, 2001. On January 11, 2002, Mr. Martin said that Qwest's legal department advised not to provide a written list. He said that, instead, Ms. Filip would call Eschelon to verbalize a list and then there would be some documentation of agreed upon issues. Ms. Filip did not provide a verbal list or later documentation after that date. The parties did not agree on this issue.

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Request. Eschelon believes a reasonable conclusion to draw from Qwest's silence on the specifics of this point is that Qwest admits that it pulled Eschelon representatives from CMP Re-design meetings. Qwest broadly states, however, that Eschelon's participation in CMP Re-design was "never restricted," Qwest's Comments, p. 7, so this assertion needs to be addressed.

Qwest excluded Eschelon from virtually all of the Qwest CMP Re-design meetings that took place on October 30, 2001 through November 1, 2001. Lynne Powers of Eschelon planned to participate in those sessions by telephone, and Karen Clauson of Eschelon flew to Denver at Eschelon's expense with the plan of staying through the November 1<sup>st</sup> meeting. *See* Exhibit 17. As indicated on Qwest's Attendance Record for that meeting, however, Eschelon did not participate on either October 31 or November 1, 2001. *See* Exhibit 18 at Attachment 1. The minutes of the meeting show that both Ms. Powers and Ms. Clauson participated in the meeting on the morning of October 30. *See id.* During this portion of the meeting, the parties were reviewing the agenda and indicating topics that they would like to cover. Eschelon listed several topics. *See id.* After Eschelon started to do so, Ms. Filip left the meeting and participated in a conference call with William Markert, Robert Pickens, and myself of Eschelon.

During the call on October 30, 2001, Ms. Filip threatened that, if Ms. Powers and Ms. Clauson did not stop participating in the meeting immediately, Ms. Filip would *devote all of her energies* to making Eschelon miserable. Specifically, Ms. Filip said, in an angry manner, that she would devote all of her energies to ensuring that Ms. McKenney succeeded in her objectives. I personally heard her make this statement. *See also* Exhibits 19 - 20 (Verification Affidavits of Mr. Markert and Mr. Pickens).<sup>9</sup> This told Eschelon two things: (1) that Ms. McKenney's objectives were adversarial to those of Eschelon, even though Ms. McKenney represented that she is attempting to further her customer's interests through a "business-to-business" relationship; and (2) that Ms. Filip would use her position to intentionally harm Eschelon's business. Ms. Filip, as Qwest's Senior Vice President for Global Service Delivery, holds Eschelon's lines in her hands. Given the real harm that someone in Ms. Filip's position could do to a business such as Eschelon's, Eschelon had no choice but to capitulate. Ms. Powers dropped off the call. Ms. Powers joined the conference bridge to ask Ms. Clauson to leave the meeting to take a call from her in the hallway. Afterward, as a result, Ms. Clauson had to check out of

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<sup>9</sup> Because Qwest made these statements verbally and not in writing, it has the advantage of saying that Eschelon cannot provide written evidence of Qwest's own statements. In addition to affidavits from Eschelon's participants in the conversation, the Commission has the outside evidence showing that Eschelon intended to participate fully in the meetings but then left abruptly. *See, e.g.,* Exhibit 17. When viewed in the context of all of the other Exhibits provided with this Reply, that conduct is consistent with the evidence that Qwest was attempting to limit Eschelon's participation in CMP. Similarly, Eschelon's statements in its February 8, 2002 letter (discussed in Qwest's Comments, p. 8) should be read in the context of all of the Exhibits to this Reply and, in particular, Exhibit 21. Given Qwest's heavy reliance on oral communications (even including at least one oral agreement with a competitor, *see* Qwest's Comments, at 8), the Exhibits are as much or more written documentation as can be expected to dispute the claims in Qwest's June 27 Letter and Qwest's Comments.

her hotel early and return to Minneapolis. *See* Exhibit 17. Eschelon had raised issues that it believed needed prompt discussion, but Eschelon did not participate in the remainder of the meeting on October 30, or the meetings on October 31 and November 1. Despite Qwest's statements to the contrary, being excluded from meetings restricts participation in the process and prevents a party from raising issues at those meetings. *Cf.* Qwest's Comments, p. 7 ("never restricted") & Qwest's June 27 Letter, p. 3 ("No re-design participant, including Eschelon, has ever been prevented from raising any issue during that process.").

#### Timing of Qwest's Ending Specific Payments to Eschelon

As indicated, the arguments with Qwest about the "allowable" level of Eschelon's participation in CMP and CMP Re-design continued for months, over which time Eschelon became more resolved that it needed to participate in the meetings. In other words, over this period of time, it became clear to Qwest that Eschelon was not going to remain silent or just do as it was told. As Eschelon pointed out in its June 24 Letter (p. 5, note 14), during the same general time frame<sup>10</sup> when Qwest was having this realization, Qwest stopped making payments to Eschelon, despite written contractual obligations to pay Eschelon. Although Qwest is well aware of the facts, Qwest complains in its June 27 Letter (p. 4) that Eschelon's statements are "vague and non-specific." To address that complaint, Eschelon will be clear about the payments that Qwest stopped, the timing, and the effect on Eschelon.

The Consulting Fee Agreement (§ 3) required Qwest to pay Eschelon "an amount that is ten percent (10%) of the aggregate billed charges for all purchases made by Eschelon from Qwest November 15, 2000 through December 31, 2005."<sup>11</sup> A later agreement provided that Qwest would pay this amount to Eschelon on a quarterly basis. This is a written contractual obligation that Qwest has defended as a legitimate settlement agreement. Qwest is not claiming that Eschelon breached this provision. To the contrary, Qwest recently submitted sworn testimony indicating that Qwest now places a "very high value" on the consulting services of Eschelon.<sup>12</sup> Given that according to Qwest's own account Eschelon was in compliance with the written contract, no legitimate basis existed for Qwest to stop payment under that agreement. Qwest stopped paying Eschelon pursuant to this provision, however, after August of 2001. In the

<sup>10</sup> Eschelon uses the term "general" time frame because Qwest payments may be late or may not be due for a set period of time. Therefore, the exact date on which Qwest stopped payments can be difficult to pinpoint.

<sup>11</sup> *See* Confidential Amendment to Confidential/Trade Secret Stipulation (Nov. 15, 2000) ["Consulting Fee Agreement"], at § 3; provided by Eschelon in response to Staff Request Number 1:2 in Docket Number RT-00000F-02-0271.

<sup>12</sup> *See* Qwest Corporation's Written Direct Testimony of Judith Rixe, p. 9, line 15, *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, MPUC Docket No. P-421/C-02-197 (April 22, 2002) ["Rixe Testimony"].

absence of a breach, one looks for other factors to explain Qwest's refusal to honor its contractual commitment while Eschelon was providing services of "high value."

Qwest claimed that it was withholding payment because Eschelon had complained that switched access minutes were missing and that Qwest had not delivered on its promise to negotiate pricing adjustments, and negotiations were continuing as to these and other issues. Those issues, however, were separate from the undisputed consulting fee. Qwest could have continued to honor its written obligation to pay the consulting fee, as it was required to do by the contract, while disputed issues were negotiated. Instead, Qwest made it a condition of resolution of Eschelon's legitimate access, service quality, and pricing complaints that the Consulting Fee Agreement be terminated.<sup>13</sup> Unilaterally enforcing its position, Qwest stopped paying the consulting fee. The last payment was for August of 2001.<sup>14</sup> There is a correlation between the timing of Eschelon's assertion of its various rights and Qwest's stopping of the payments. Qwest knew full well the impact of its action, particularly in the prevailing telecommunications market. Because bankruptcies were so common at that time, one could hardly open a telecommunications publication during this period without reading about another one. Qwest earns more revenue by the second day of January in each year than Eschelon earns in an entire year. Qwest knew which party's bargaining position would be most adversely affected by its decision to stop payments.

When Eschelon raised this issue previously, Eschelon said that it "does not know whether any CLEC that did stop its participation in CMP, if any, continued receiving payments whereas the payments to Eschelon stopped." See Eschelon's June 24 Letter, p. 5, note 14. As indicated, Eschelon does not have access to all of the information necessary to make this determination. Eschelon is aware that other unfiled agreements between other carriers and Qwest have been disclosed, including an agreement or agreements that require payments to McLeodUSA. McLeodUSA was initially a CMP Core Team Member, but its status was changed for failure to participate actively in the working sessions. See Exhibit 18, pp. 11-12. Eschelon has had no opportunity to review the various McLeodUSA agreements, nor is it requesting that here. Eschelon can only state that it cannot confirm one way or another whether McLeodUSA (or any other

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<sup>13</sup> Qwest attempted to impose other conditions as well, as discussed below with respect to the proposals signed by Ms. McKenney. See Exhibit 21.

<sup>14</sup> The Switched Access Reporting Agreement required Qwest to pay Eschelon the difference between \$13.00 per line and \$16.00 per line from January 1, 2001 until the parties agreed to do otherwise. See Letter from Audrey McKenney to Eschelon's President, p. 2 (July 3, 2001) ["Switched Access Reporting Letter"] (provided by Eschelon in response to Staff Request Number 1:2 in Docket Number RT-00000F-02-0271). Although the parties did not agree to do otherwise until March 1, 2002, Qwest also stopped paying Eschelon pursuant to the Switched Access Reporting Letter as of September 2001. Eschelon (not Qwest) had complained about other switched access reporting issues. Unlike the consulting fee, at least some other access issues were the subject of a dispute. When payments stopped, however, there was no dispute that the \$3 per line (approximately \$150,000 per month) was due to Eschelon pursuant to the terms of the Switched Access Reporting Letter. Qwest was not claiming, for example, that Eschelon had yet agreed otherwise.

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carrier) payments, if any, continued while its participation in the CMP Core Team decreased and, if so, whether the two issues are related.

In response to Eschelon's initial statement along these lines, Qwest objects to the possible implication that "Qwest made payments to other CLECs to keep them from participating in the CMP process." See Qwest's June 27 Letter, p. 4. Qwest implies that Eschelon has no evidence that would suggest that Qwest would do such a thing. Enclosed with this Letter is a document, provided to Eschelon by Qwest and signed by Ms. McKenney, that provides that Qwest was willing on October 30, 2001 to pay Eschelon money as long as Eschelon refrained, among other things, "from participating in . . . Change Management Process workshops." See Exhibit 21 (Qwest Proposed Confidential Purchase Agreement ¶ 3). Although Eschelon did not sign this proposal, Qwest was clearly making the offer. Eschelon does not know whether any other carrier was offered and accepted this or a substantially similar proposal. The fact that Qwest made the offer to Eschelon, however, raises the legitimate question as to whether this occurred at the same or any other time.

Eschelon does not have copies of all of the approximately 100 unfiled agreements that Qwest has entered into with various carriers and, of course, it cannot have copies of unwritten agreements. In this environment, it is fair to state that Eschelon does not know whether any carrier signed a document similar to Exhibit 21 and, if so, whether Qwest continued to make payments pursuant to that agreement. Eschelon is not claiming a right to this information. It is an issue for the Commission to investigate, if it so desires.

Qwest concludes its discussion of this issue by stating that "Qwest's and Eschelon's billing disputes are wholly unrelated to the 271 process." Eschelon agrees and, quite frankly, wishes Qwest would have taken this position much earlier. If it had, Eschelon could have participated in the 271 proceedings while negotiating disputes with Qwest. Qwest's assertion now begs the question as to why Qwest then conditioned negotiation of disputes on agreements not to participate in 271 proceedings.

#### CMP Participation. Absence of Complaints. and Advocacy Regarding Participation in Proceedings

Except when completely excluded from meetings, Eschelon maintained some level of participation in CMP.<sup>15</sup> Although Qwest was not always as successful in limiting Eschelon's participation in CMP as it desired,<sup>16</sup> Qwest's efforts nonetheless forced Eschelon to expend resources in responding to and resisting Qwest's position. See, e.g., Exhibits 8 & 13. Those resources could have been expended on other CLEC business.

<sup>15</sup> Although Eschelon managed to maintain some level of participation in CMP and CMP Re-design, Qwest succeeded particularly in chilling the number of live examples of problems with commercial performance that Eschelon brought to the meetings.

<sup>16</sup> As to whether Qwest attempted to influence Eschelon's level of participation, please see the previous section and attached exhibits.

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Also, Eschelon had to consider the risks associated with upsetting its monopoly supplier while at the same time try to protect its own interests. This meant that Eschelon had to maintain a conciliatory tone and cooperate in Qwest's requests at times, even when full, uninhibited participation would have been preferable.<sup>17</sup>

Qwest also claims that, at any time, "Eschelon could have sought redress through *regulatory* or legal avenues." See Qwest's June 27 Letter, p. 2 (emphasis added). Qwest does not acknowledge the following restriction in the Escalation Letter:

During the development of the Plan, and thereafter, if an agreed upon Plan is in place by April 30, 2001,<sup>18</sup> Eschelon agrees not to . . . *file complaints before any regulatory body* concerning issues arising out of the Parties' Interconnection Agreements.

See Exhibit 14 (Escalation Letter) (emphasis added), p. 1. Despite Qwest's sweeping claims to the contrary, Eschelon could not, consistent with its obligations, file complaints before any regulatory body regarding quality of service, pricing, discrimination, or any other issue arising under the interconnection agreement during negotiations or afterward. Qwest has not explained why it insisted on the terms of the Escalation Letter as part of proceeding to develop and implement a plan to address Eschelon's quality of service complaints. It has not said why Eschelon could not both work with Qwest to develop a plan and, until satisfied, participate in the 271 and SGAT workshops.<sup>19</sup> When a plan was successfully implemented, Eschelon could have then filed a withdrawal from the 271 proceedings and proclaimed its issues were resolved (as SunWest apparently did, see discussion below). If a plan was not successfully implemented, Eschelon could have filed complaints. Although Qwest's letters suggest that Eschelon was free to do so, the provisions of the Escalation Letter were a Qwest condition of obtaining and implementing a plan to improve service quality, not a provision following successful implementation of a plan. See Exhibit 14; Eschelon's June 24 Letter (pp. 2-4).

Although Qwest conditioned obtaining and implementing a plan to improve service quality upon not opposing Qwest in 271 proceedings, Qwest claims that the purpose of the Escalation Letter "was not to suppress complaints but to *resolve* them." Qwest's June 18 Letter, p. 1 (emphasis in original). As discussed, the text of the Escalation Letter expressly suppresses complaints before, during, and after

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<sup>17</sup> Also, as indicated above, the limitations on Eschelon's participation did result in some decisions that lasted beyond the meetings in which Eschelon's participation was affected or precluded.

<sup>18</sup> As indicated in Eschelon's June 24 Letter, this date was extended until the end of July 2001.

<sup>19</sup> Qwest refers to agreements "wherein a CLEC agreed not to participate in the 271 proceeding" and states that "there were only *two* such agreements." Qwest's Comments, p. 3 (emphasis added). Qwest then goes on to discuss *three* such agreements: Eschelon, XO, and McLeodUSA (unwritten agreement "not to be involved in 271"). See *id.* pp. 4-5 & 8. Qwest has not explained why any of these agreements were necessary, if the information possessed by these three CLECs and their participation would not have affected the outcome of the 271 proceedings anyway, as claimed by Qwest.

implementation of a quality service plan. Additionally, as Eschelon previously pointed out:

[O]n October 30, 2001, Qwest provided two written proposals to Eschelon. In those proposals, Qwest said it would require Eschelon to "deliver to Qwest all reports, work papers, or other documents related to the audit process" relating to missing switched access minutes to Qwest. Qwest also conditioned payments otherwise legitimately due to Eschelon upon Eschelon agreeing that it would "when requested by Qwest file supporting testimony/pleadings/comments and testify whenever requested by Qwest in a manner suitable to Qwest (substantively)." Eschelon refused to sign these proposals. The issues between Eschelon and Qwest could easily have been resolved without these provisions, which did nothing to address problems experienced by Eschelon. But, Qwest included those terms as an integral part of its proposals.

See Eschelon's June 24 Letter, p. 5; see also Exhibit 21 (Proposed Confidential Billing Settlement Agreement, ¶ 7 & Proposed Confidential Purchase Agreement, ¶ 3).

Ms. McKenney signed these proposals, copies of which are attached. See *id.*<sup>20</sup> Qwest has not explained the purpose of delivering all evidence of the audit process to Qwest, if not to "suppress" information. See Qwest's June 18 Letter, p. 1.<sup>21</sup> With respect to the proposal that said Eschelon would "when requested by Qwest file supporting testimony/pleadings/comments and testify whenever requested by Qwest in a manner suitable to Qwest (substantively)," see *id.*,<sup>22</sup> it provided no limitation on Qwest's requests, such as that the testimony requested be true and accurate.<sup>23</sup> The agreement simply contained an offer of a monetary inducement to obtain services and testimony upon request.<sup>24</sup> The same document required that the agreement remain confidential.

<sup>20</sup> Qwest has actually suggested that Ms. McKenney may represent Qwest on the committee it has said that it will form to review agreements with respect to the filing requirement. See Exhibit 22 (Excerpt from Minnesota transcript, p. 47, line 23 - p. 48, line 2 & p. 50, line 22 - p. 51, line 7).

<sup>21</sup> Although Qwest may argue that this provision relates to protecting customer-identifying information, that is not the case. Most of the audit documents contain no customer-identifying information. In any case, both Qwest and Eschelon routinely deal with customer-identifying and other confidential information without making one carrier turn everything over to the other. As indicated in Eschelon's letter to Mr. Nacchio (discussed in Qwest's Comments, p. 3), Qwest's verbal communications to Eschelon suggested Qwest's intent even more clearly than the written documentation.

<sup>22</sup> Qwest's Proposed Confidential Purchase Agreement (¶ 3) also provided: "Eschelon agrees, during the term of this PA, to refrain from initiating or participating in any proceeding (regulatory, judicial, arbitration, or legislative) where Qwest's interests may be implicated, including but not limited to, formal or informal proceedings related to Qwest's or its affiliates' efforts to obtain relief pursuant to section 271 . . . , including but not limited to, Change Management Process workshops, performance indicator/assurance dockets and cost dockets." See Exhibit 21.

<sup>23</sup> The fact that Eschelon need not be reminded of its obligation to testify truthfully (as alleged by Mr. Martin) is evident from the fact that Eschelon (and not Qwest) raised this issue. Without language in the document to this effect, however, the proposed contractual obligation reads as Qwest intended it - as requiring Eschelon to testify when and how dictated by Qwest.

<sup>24</sup> Qwest's proposal provided that payments would be made monthly so long as Qwest unilaterally determined that Eschelon was providing services "satisfactory" to Qwest. See Exhibit 21 at ¶ 2. Those

*See id.* Therefore, if Eschelon agreed to the proposal, it would be placed in the position of having to offer testimony without disclosing a fact that would bear on the veracity of that testimony – it had been induced. Eschelon rejected Qwest's proposals, although it did not do so lightly. Eschelon viewed this as its Cuban Missile Crisis with Qwest and genuinely did not know how Qwest would react.

Although Qwest claims that it was just negotiating routine settlement agreements, Qwest has not explained why provisions relating to delivery of evidence to Qwest or testifying as dictated by Qwest are legitimately related to resolving genuine service and pricing disputes. In negotiations, Qwest would not discuss resolution of legitimate issues such as missing switched access minutes, however, without also discussing a commitment by Eschelon relating to evidence and testimony. In its response, Qwest does not address the language of the documents in Exhibit 21. *See* Qwest's Comments, p. 10. Similarly, when Eschelon raised this question in a letter to Qwest's then Chief Executive Officer Joseph Nacchio (which was copied to Qwest's current General Counsel),<sup>25</sup> Qwest did not respond to the specific facts. As Qwest indicates in its Comments, Qwest said that it would not "dignify each of Mr. Smith's allegations with a response." Qwest's Comments, p. 9.<sup>26</sup> After reading the documents in Exhibit 21 and considering the absence of an explanation, however, a more reasonable conclusion is that Qwest was silent with respect to the proposals in Exhibit 21 because the documents speak for themselves.<sup>27</sup>

Instead of addressing that issue or acknowledging the express language of the Escalation Letter suppressing complaints, Qwest argues that Eschelon "evidenced a continuing awareness of its ability to go to the regulators if its concerns were not addressed." Qwest's June 27 Letter, p. 2; Qwest's Comments, p. 7. The fact that Eschelon's participation was virtually non-existent in 271 proceedings, combined with

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"services" included, for example, Change Management functions. *See id.* If Qwest was not "satisfied" in any particular month, Qwest could, in its discretion, penalize Eschelon for behavior it deemed bad by refusing payment. *See id.*

<sup>25</sup> Qwest states in its Comments (p. 8) that AT&T submitted a copy of Eschelon's February 8, 2002, letter to Mr. Nacchio with its filing in both Arizona Docket Numbers RT-00000F-02-0271 and T-00000A-97-0238. Therefore, Eschelon has not attached another copy with this filing. Although the Escalation Letter required Mr. Nacchio to meet with Eschelon, he refused to do so. Although Mr. Nacchio indicated that Ashfin Mohebbi would act on his behalf (*see* letter attached to Qwest's Comments), the Escalation Letter specifically identified Mr. Nacchio and not a subordinate. *See* Exhibit 14. Moreover, despite Mr. Nacchio's representation, Mr. Mohebbi never participated in escalation (or any) discussions.

<sup>26</sup> Qwest states that it attached a copy of Mr. Martin's letter to its Comments, so Eschelon has not attached another copy with this filing.

<sup>27</sup> The other point that Qwest states it will not "dignify" with a response is a point that was not even made by Eschelon. *See* Qwest June 27 Letter, p. 1, note 1. Although Qwest focuses on some introductory language from a *Wall Street Journal* article cited by Eschelon, Eschelon's June 24 Letter (p. 1) clearly cites the article as evidence to support Eschelon's statement that "Qwest continually attempted to distinguish Qwest from the former company, US West." The examples in the *Wall Street Journal* show this is the case. Qwest's silence on this latter point may reasonably be viewed as an admission that it cannot dispute the truth of the statement about Qwest's conduct vis a vis the former US West.

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the absence of Eschelon complaints against Qwest (on non-cost issues),<sup>28</sup> shows that Eschelon was not in a position to put that advocacy to the test by risking a breach of the Escalation Letter. Eschelon did argue privately to Qwest that Eschelon believed it had the right to participate more fully in proceedings. Because Qwest routinely did not respond in writing to Eschelon's letters, Qwest has left itself the option of pointing to Eschelon's letters as though Qwest agreed with them at the time. Qwest fails to mention, however, that Qwest verbally opposed Eschelon's advocacy in this regard in no uncertain terms.

One example, in particular, stands out. Eschelon argued to Qwest that the Escalation Letter's requirement that Eschelon "not oppose" Qwest in 271 did not preclude participation in proceedings relating to the language of Qwest's Statement of Generally Available Terms ("SGAT").<sup>29</sup> For example, in a letter dated April 5, 2001, Eschelon argued to Qwest: "In theory, Eschelon can either shape interconnection agreements through participation in SGAT proceedings or we can attempt to negotiate agreements with Qwest as desired by Qwest. . . . Either the Implementation Plan must deal substantively with the interconnection agreement process or Eschelon must participate in SGAT proceedings." Exhibit 23, p. 4. Although Qwest is not specific, Eschelon's assertion in this letter apparently "evidenced a continuing awareness" of Eschelon's ability to participate in SGAT proceedings. On this particular occasion, Eschelon not only made its argument but also attempted to act upon it. Eschelon sent a representative, Ms. Clauson, to the multi-state SGAT workshop held in Denver April 30 - May 2, 2001.

Qwest's opposition was swift and unambiguous. Shortly after Ms. Clauson entered the room where the workshop was held, Nancy Lubamersky of Qwest picked up her cell phone and left the room. Before the first break, Qwest had called Eschelon's President to complain of Ms. Clauson's presence. In addition, at the outset of the first break, Qwest's attorney Charles Steese summoned Ms. Clauson to the hallway for a conversation. Mr. Steese told Ms. Clauson in no uncertain terms that she should not be present. He said that he had it on good authority that the agreement to keep Eschelon out of the 271 proceedings specifically included Ms. Clauson. Ms. Clauson attempted to explain the actual language of the Escalation Letter, but Mr. Steese was not interested. Through Qwest's calls to Eschelon and conversation with Ms. Clauson, Qwest succeeded in chilling Eschelon's full participation. After the workshop, Qwest called Eschelon to the carpet and made Eschelon explain "what Karen Clauson had said and had not said" during the workshops. *See* Exhibit 24. In a follow up conference call "to discuss Karen's participation in that meeting and in similar future meetings," *see id.*, Qwest reiterated its position that Eschelon could not participate in the SGAT workshops. Eschelon did not participate in 271/SGAT workshops after this additional demonstration of Qwest's opposition.

<sup>28</sup> The Escalation Letter provided that Eschelon could, after notice to Qwest, participate in regulatory cost dockets or dockets regarding the establishment of rates. *See* Exhibit 14.

<sup>29</sup> *See* Eschelon's June 24 Letter, p. 3 & note 8.

271 Participation: March of 2002 and After

Qwest states: "Importantly, the Agreement, including any agreement not to oppose Qwest's application for relief under Section 271, was terminated in February of 2002. To the extent that Eschelon decided not to participate fully in the 271 process after that termination, it was Eschelon's internal business decision that mandated that result, not the Agreement." Qwest's June 27 Letter, p. 2; *see also* Qwest's Comments, p. 7. The agreement to not oppose Qwest's 271 bid did not terminate until an effective date of February 28, 2002. *See* Exhibit 25. That agreement was executed on the afternoon of Friday, March 1, 2002. *See id.* Therefore, the first business day on which Eschelon could actually participate in Qwest 271 proceedings was March 4, 2002. On March 4, 2002, Eschelon provided discovery responses to the Minnesota commission, including a 3-inch, 3-ring binder of materials, in Minnesota's 271 proceeding. Minnesota had completed fewer 271 workshops or hearings at that point than other states, and it was one of the few states in which discovery had been directed to Eschelon. Shortly afterward, Eschelon provided similar materials to the Washington commission in response to discovery requests in its 271 proceeding. Recently, Eschelon filed comments with the Federal Communications Commission ("FCC") in opposition to Qwest's 271 application. *See* Exhibit 26 (also available, with exhibits, at <http://www.fcc.gov/e-file/ecfs.html>).

Significantly, Qwest discusses Eschelon's alleged lack of participation in 271 proceedings after termination of the agreement without mentioning that the 271 workshops were essentially completed by then and, when Eschelon has attempted to participate, Qwest has opposed those efforts. In Arizona, Eschelon understood that all workshops were completed by March 2002. Arizona held special open meetings addressing Qwest Operations Support Systems ("OSS") and Performance Assurance Plan ("PAP") after that date, but those meetings would have been particularly difficult to participate meaningfully in without the benefit of participation in the preceding proceedings on those complex topics. To the extent that any 271 proceedings in other states remained active, they were so far along that getting up-to-speed on substance and procedure in time to participate meaningfully was not a realistic possibility. Moreover, when Eschelon attempted to participate in the Minnesota 271 proceeding and to support AT&T's efforts to re-open other proceedings, Qwest opposed those efforts. In Minnesota, Qwest filed a motion to strike Eschelon's testimony. Absence from the 271 proceedings for a period of more than a year has affected Eschelon's ability to participate effectively in 271 proceedings at this point. Although Eschelon has attempted to participate in 271 proceedings on and after March 4, 2002, the reality is that Qwest succeeded in its objective that Eschelon not participate meaningfully for the time period when participation mattered.

Ironically, after criticizing Eschelon for not participating in 271 proceedings after February of 2002 (*see* Qwest's June 27 Letter, p. 2; Qwest's Comments, p. 7), Qwest will likely complain now that Eschelon has filed comments with the FCC in opposition to

Qwest's 271 bid. Qwest has questioned the motives of other CLECs that have challenged its 271 bid on the grounds that they are merely trying to keep Qwest out of their market rather than raising genuine concerns. Qwest may do so now as to Eschelon as well. Eschelon is not an interexchange carrier ("IXC") itself; Eschelon resells the long distance service of another carrier. Eschelon recognizes, however, that allowing Qwest to enter the in-region, interLATA market prematurely would be detrimental to Eschelon, as well as other CLECs and IXCs in Qwest's territory. When weighing this as a motive for Eschelon's actions, however, the Commission should consider that Eschelon nonetheless at one time entered into the Escalation Letter and said it would possibly even support Qwest's 271 bid in 271 proceedings if Qwest's performance justified doing so. That didn't work. Eschelon is opposing Qwest's 271 bid now because genuine commercial performance issues show that Qwest's entry into the in-region long distance market at this time would be premature. See Exhibit 26.

#### Any Benefit Unrelated to Limitation on 271 Participation

Qwest argues that persuading CLECs to stay out of the 271 proceedings aided the process and benefited all CLECs. See Qwest's Comments, pp. 7 & 10. For example, Qwest argues that developing an implementation plan to improve the provisioning process for Eschelon benefited all CLECs because the improved process was implemented uniformly. See *id.* While Eschelon agrees that efforts to improve Qwest's provisioning process benefited CLECs, as well as Qwest, Eschelon does not agree that this could not have been done without an agreement to stay out of 271 proceedings. Qwest could have simply worked with CLECs to understand their needs and the CLEC perspective and then improved its processes accordingly. Unfortunately, Qwest was not willing to proceed on that basis.<sup>30</sup>

<sup>30</sup>Qwest entered into a confidential agreement with Eschelon, which has since been terminated as to Eschelon, providing for a 10% consulting fee. See Consulting Fee Agreement, at ¶ 3. Qwest could have filed this agreement with the commissions and made it available to other CLECs, but it chose not to do so. The fee was part of an arrangement under which Qwest was supposed to purchase consulting services from Eschelon that would benefit all CLECs. As indicated, Qwest recently testified that it now places a "very high value" on the consulting services of Eschelon. See Rixe Testimony, p. 9, line 15. Eschelon firmly believes that its efforts were valuable and, in arguing this point, provided documentation and information to Qwest to support Eschelon's position. While Eschelon believes that Qwest benefited from Eschelon's actions because Eschelon expended substantial resources trying to get Qwest to improve its performance, Qwest did not recognize this at the time or actually accept the consulting services. Qwest resisted Eschelon's efforts to form teams or otherwise work on a true consulting basis to improve Qwest's processes. The amount of resources that Eschelon expended to attempt to effectuate change were far more excessive than they needed to be if Qwest had accepted Eschelon's services willingly, given Eschelon (and other CLECs) visibility into its processes, and worked together at an early stage to ensure that processes, when developed, met CLEC needs. For Qwest to now describe in favorable terms its adversarial position that caused such additional resource expenditures does not capture the true course of events, even though Eschelon does agree that its efforts benefited Qwest and other CLECs as well. More recently, it has come to light that Qwest was entering into other unfiled agreements at the time, such as reported agreement(s) ostensibly to purchase fiber capacity, for a discount. If so, this additional information provides further evidence that Qwest's costs are not cost-based, because they allow for Qwest to offer these "discounts" in various forms, and the resale discount, in particular, may need to be reviewed.

### What Could Have Been

Qwest attempts to place an unattainable burden on CLECs: to show what would have transpired if the 271-related agreements had not existed. *See, e.g.*, Qwest's June 27 Letter, p. 1. Because of such an agreement, however, Eschelon was not involved in the 271 process and does not know whether all of its issues have been addressed. Eschelon can indicate that Qwest commercial performance problems still exist. *See* Exhibit 26. Eschelon can also point out that its business plan is different from other CLECs that were involved in the process. Eschelon recognizes and appreciates the diligent, resource-intensive, and valuable efforts of larger CLECs, but their needs and those of Eschelon are not the same. In fact, none of the "committed advocates" listed by Qwest as participants in the proceeding have the same needs or information as Eschelon. *See* Qwest's Comments, p. 11. Nor do they have the commercial experience in Qwest's territory comparable to that of Eschelon and McLeodUSA, reportedly Qwest's two largest wholesale customers, neither of which participated. Undoubtedly those participants are committed, but different business plans and commercial experience are significant factors when shaping terms of an SGAT or analyzing commercial performance.

The existence or non-existence of the 271-related agreements is not the only factor affecting what could have been. In June of 2001, Qwest received discovery requests that, by its own account, sought production of the agreements not to participate in 271, but Qwest did not produce them. This fact presents the question of what would have transpired if Qwest complied with the discovery request last June.

On June 11, 2001, AT&T served the following discovery request on Qwest:

Please produce all agreements, letters and other documents of any kind that reflect the terms and provisions, or any term or provision, of settlement made between Eschelon and Qwest.

Exhibit 27 (AT&T's Thirteenth Set of Data Requests to Qwest, Request No. 126, 271 multi-state proceeding, June 11, 2001).<sup>31</sup>

AT&T also requested copies of such agreements with McLeodUSA and a company called Sun West Communications, Inc. ("SunWest"). *Id.*<sup>32</sup> SunWest had raised issues relating to Qwest's provisioning of unbundled loops deployed over IDLC with number portability in the Colorado 271 workshop. On June 1, 2001, Qwest filed a

<sup>31</sup> Also available at [www.libertyconsultinggroup.com/discovery\\_requests.htm](http://www.libertyconsultinggroup.com/discovery_requests.htm).

<sup>32</sup> In addition, with respect to any carrier, AT&T requested any "settlement made by Qwest of any dispute over Qwest's compliance, or lack of compliance, with one or more items of the competitive checklist set forth in 47 USC § 271(c)(2)(B)." *Id.*

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"Withdrawal of Opposition to Qwest's Petition to Obtain Approval to Enter the In-Region InterLATA Telecommunication Market" in the Colorado 271 docket on behalf of SunWest [Withdrawal]. See Exhibit 28. In the Withdrawal, SunWest said that it had reached a settlement with Qwest. SunWest also said that the issues it raised in the Section 271 workshops had been resolved to SunWest's satisfaction. See *id.* The timing of AT&T's discovery request (dated ten days after the Withdrawal) suggests that the mention of a "settlement" in the Withdrawal prompted AT&T's request. By June 11, 2001, Eschelon was absent from 271 workshops, even though Eschelon had previously raised significant issues in those proceedings. Unlike SunWest, Eschelon's quality of service issues had not been resolved to Eschelon's satisfaction.

With respect to SunWest, Eschelon, and McLeodUSA, AT&T requested "settlement" agreements. Qwest specifically states that the two agreements referred to by Commissioner Spitzer that mention Section 271 proceedings, which include the Eschelon Escalation Letter, are "settlements." See Qwest June 18 Letter, p. 1. Therefore, by Qwest's own account, the agreements are responsive to AT&T's request. Qwest responded, however, by objecting to the request without providing copies of any agreements.<sup>33</sup> Qwest said:

In addition to the General Objection, Qwest objects to this request on the grounds that it is overly broad, global, seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other legally cognizable privilege, seeks third-party confidential information, seeks information that is highly confidential, proprietary, and competitively sensitive, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

See Exhibit 29 (Qwest's Objections and Responses to AT&T's Thirteenth Set of Data Requests, Response to Request No. 126, 271 multi-state proceeding, June 20, 2001).<sup>34</sup>

Although Qwest objected that the Request called for "third-party confidential information," Qwest did not ask Eschelon for consent to disclose any agreements before responding to AT&T's request, despite language in some of the agreements indicating that they could be disclosed with express written consent of the other party. Nothing in the Escalation Letter prevented Qwest from seeking consent to provide copies in discovery. In addition, with respect to the Consulting Fee Agreement (¶ 10), it provides:

In the event either Party . . . has a legal obligation which requires disclosure of the terms and conditions of this Confidential 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

<sup>33</sup> On every occasion on which Eschelon has been asked to produce its unfiled agreements with Qwest in discovery, Eschelon has provided copies of them (including the Escalation Letter).

<sup>34</sup> Also available at [www.libertyconsultinggroup.com/discovery\\_requests.htm](http://www.libertyconsultinggroup.com/discovery_requests.htm).

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such action as may be legally permissible so as to protect the confidentiality provided in this Agreement.

Although Eschelon received a copy of the above discovery request directed to Qwest, Eschelon did not exercise its option to take any action to protect the confidentiality provided in the Agreement. Yet, Qwest did not produce the Consulting Fee Agreement or any of the other agreements, including the Escalation Letter, to AT&T in its Response. As indicated, AT&T served its discovery request upon Qwest on *June 11, 2001*. If Qwest had provided AT&T with copies of the Eschelon, McLeodUSA and other agreements at that time, AT&T (and any other party receiving copies of discovery responses) could have raised the issues being addressed by the Commission now at least *seven months* earlier.<sup>35</sup> The Commission will decide whether, in addition to identifying any "specific terms or issues" that were not addressed in the 271 workshop process,<sup>36</sup> these facts are relevant.

#### Conclusion

In Eschelon's June 24 Letter, Eschelon indicated that it hesitated to send its letter for a number of reasons, including the state of the telecommunications market, tight resources particularly for a start-up, smaller company, and the fact that Eschelon has settled some of its own claims with Qwest and may be viewed as late in speaking out. Twenty-some additional pages and many exhibits later, Eschelon can confirm that going down this path has caused resource expenditures. Given the statements in Qwest's June 27 Letter and Qwest's Comments and the Commission's expression of its desire for more information to assess those statements, however, it seems incumbent upon Eschelon to provide this information. At the same time, Eschelon is aware that some may criticize Eschelon for entering into unfiled agreements with Qwest. Eschelon had pressing service and pricing issues that it needed resolved to stay alive.<sup>37</sup>

With respect to Qwest's application for 271 approval, Eschelon has stated its position in its FCC filing. *See* Exhibit 26. Although Eschelon was not an active participant in the Arizona 271 proceeding so it cannot state how each of these issues was addressed, Eschelon can state that the unresolved commercial performance problems described in those Comments occur in Arizona as well. With respect to issue of the impact of the unfiled 271-related agreements on the proceeding, Eschelon has laid out facts responsive to points raised by Qwest that the Commission may use in making its

<sup>35</sup> A&T has indicated that it did not learn of the agreements until after the Minnesota Department of Commerce filed its complaint relating to unfiled agreements in February of 2002. Although AT&T's discovery request was served in the multi-state 271 proceeding, information from one proceeding often also becomes available in other proceedings. Once AT&T received the information in the multi-state proceeding, AT&T could have also requested it in Arizona, for example.

<sup>36</sup> Eschelon believes that it has identified such terms and issues, because it has identified commercial performance problems that remain unresolved. *See* Exhibit 26.

<sup>37</sup> When considering relative positions of the parties, Eschelon is a \$100 million CLEC with 900 employees, and Qwest is a \$19 billion RBOC with 60,000 employees.

Commissioner Marc Spitzer  
Commissioner Jim Irvin  
July 10, 2002  
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determination. Commissioner Spitzer's Letter of June 26 suggested that Eschelon and Qwest address the inconsistencies between their earlier letters, and Eschelon has tried to be responsive to that request.

Sincerely,



J. Jeffery Oxley  
Vice President, General Counsel, and Corporate Secretary

cc: Chairman William A. Mundell (by facsimile & overnight mail)  
Todd L. Lundy, Qwest (by U.S. mail)  
Richard Corbetta, Qwest (by email)  
Paul A. Bullis, AG Public Advocacy Division (by U.S. mail)  
Lindy P. Funkhouser, Residential Utility Consumer Office (by email & U.S. mail)  
Docket Control (original plus 20 copies) (by overnight mail)  
Service Lists (all parties of record in both dockets) (by email & U.S. mail)

# EXHIBIT S-15

# EXHIBIT S-16

# EXHIBIT S-17

CONFERENCE CALL

Wednesday, February 21, 2001, 3:00 p.m. CST

QWEST PARTICIPANTS:

Nancy Batz, Senior Access Manager; Kevin Saville, Account Team, General Manager

ESCHELON PARTICIPANTS:

Richard Smith, President and Chief Operating Officer; Bill Markert, Director, COA & Network Economics; Dave Kunde, Executive VP, Operations & Engineering; Mark Pfeffer, Long Distance Product Manager; Karen Clauson, Director of Interconnection

ORIGINATING SWITCHED ACCESS:

Rick Smith and Nancy Batz had a telephone conversation earlier in the day regarding Nancy's February 9, 2001 letter to Eschelon in which Qwest objected to Eschelon invoices for originating switched access charges for subscribers presubscribed to Qwest intraLATA toll service (copy of letter attached). Rick said that he had re-convened this call to include additional Eschelon personnel who could expand on the facts and answer questions. Eschelon also invited Kevin Saville to participate in the call.

In its letter, Qwest asked how Eschelon's local customers were presubscribed to Qwest for intraLATA toll service. Rick and Mark Pfeffer explained that Eschelon does not seek to subscribe customers to Qwest's intraLATA toll service. Eschelon's objective is to sell a complete package (Eschelon's local, intraLATA toll and interLATA) to its customers. When that is not possible, however, Eschelon sells the service desired by the customer (e.g., local only). If a customer does not want to change intraLATA toll providers, Eschelon cannot legally force the customer to change carriers. Also, David Kunde indicated that many of our customers have been migrated from resale to our network. (Qwest never raised this issue when the lines were on resale.) When Eschelon acquired those customers on a resale basis, some of them may have asked to change local carriers without changing their PICs for intraLATA toll and interLATA toll. For a variety of reasons, therefore, some of Eschelon's local customers are presubscribed to Qwest's intraLATA toll service.

Rick Smith explained that Eschelon does not have the customers' authorization to pre-subscribe them to a provider other than Qwest, when the customer selects Qwest as its intraLATA toll carrier. Karen Clauson and Kevin Saville discussed slamming rules that prevent the local exchange carrier from slamming the customer and laws that would prevent Qwest from discouraging a customer from switching local carriers because, by doing so, the customer would no longer be able to choose Qwest as its intraLATA toll carrier. Also, at this time, Qwest's tariffs offer intraLATA toll service generally and do not exclude customers of other local carriers from the offering. Kevin and Nancy indicated that Qwest may disagree with the legal analysis. Eschelon pointed out that, in any case, it would be Qwest's responsibility to inform customers that they could not choose Qwest as their intraLATA toll carrier. Qwest would also need to

advise its business offices of its decision, so customers who call Qwest for intraLATA toll services would be notified that Qwest is not offering this service. [As Rick and Nancy discussed on the earlier call, we called Qwest's small business office (1-800-603-6000) on February 14<sup>th</sup>, 2001, and spoke to Robert. Robert told us that Qwest did provide local long distance service and confirmed that we could pre-subscribe to Qwest for that service. Robert did not tell us that, if we received local service from Eschelon, we were ineligible to pre-subscribe to Qwest for toll.]

Kevin Saville suggested that there are ways to communicate to customers that they need to change carriers, such as when Qwest divested itself of its interLATA business. Rick Smith said that Eschelon would review any proposal by Qwest to authorize Eschelon to acquire those intraLATA toll customers and hold harmless Eschelon from any claims caused by doing so. Eschelon suggested that state or federal approval might be needed for such a proposal. Rick Smith added that Qwest would more likely prefer to keep the revenue from the intraLATA toll customer rather than turn over such customers to Eschelon. If so, Rick re-iterated that Eschelon is willing to provide the customer information necessary to allow Qwest to bill on-net Eschelon local customers (i.e., customers on Eschelon's switch). Kevin will provide a proposal or let Eschelon know that it needs such information.

Bill Markert said that he believed that one reason this issue may have been flagged at Qwest is the magnitude of some invoices billed to Qwest by Eschelon. Bill explained that Eschelon may have inadvertently billed intraLATA toll usage for local AMA records. Bill said that he previously told Qwest (Liz Krohn) to dispute any usage that Qwest believes is not valid. Instead, Qwest has not paid anything, even though some of the charges are valid. Bill indicated that Eschelon is conducting a traffic study that may bring down the amount by a ballpark figure of approximately 75%. He added that there will nonetheless be some true intraLATA toll calls (with Qwest PIC) for which charges are legitimate, and Eschelon expects Qwest to pay the switched access charges associated with those calls.

Nancy Batz agreed that such an adjustment in the amount of the bill would reduce Qwest's concern. She could not commit at this time that Qwest definitely would agree to paying the remaining originating switched access charges associated with intraLATA toll calls for subscribers presubscribed to Qwest, but she agreed that it may be possible and she would check into this.

Nancy pointed out that Qwest does not have a billing and collection agreement with Eschelon and Qwest does not have a means to bill and collect such intraLATA toll. Bill Markert explained that, for other carriers, this issue is dealt with through informal BNA agreements. Under these BNA arrangements, the carrier provides the ANIs, and Eschelon provides the name and address. Eschelon indicated that it believes Qwest would only need this information for its on-net customers, because Qwest would already know the name and address for PLATFORM customers. Qwest would have to confirm this.

Nancy indicated that she has looked at some numbers for December and believes the 75% is understated. Bill said that the 75% estimate was based on Oregon only. Nancy said that Oregon adopted equal access fairly recently. Dave Kunde indicated that this may explain why the bills for Oregon were larger. Because Oregon has not had intraLATA equal access in place for as

long as some other states, more customers would logically be presubscribed to Qwest for intraLATA toll service. Nancy agreed that she would review Bill's study results, when available, and they could discuss a reasonable way to determine the amount.

#### ACCESS RECORDS:

Bill Markert explained that Qwest is not providing records from which Eschelon could bill Qwest for access for intraLATA toll calls when Qwest is the PIC carrier (for on net and UNE-P customers). As an example, if a Qwest retail customer who has selected Qwest as the intraLATA toll PIC calls an Eschelon UNE-PE local customer, Qwest should provide a record of that intraLATA toll call to Eschelon, so that Eschelon can bill Qwest for terminating access. Qwest is not providing those records. Another example is an Eschelon local customer who calls a Qwest customer when the Eschelon customer has selected Qwest as the intraLATA toll PIC. Qwest should provide originating access records, but is not doing so. Also, in the minutes per line per month information provided by Qwest as part of our PLATFORM agreement, Qwest appears to have stripped out this information. For Eschelon's on-net lines, Qwest has never provided intraLATA toll terminating records for traffic with a Qwest PIC, but it should be doing so. Now that we have platform lines, we also need originating and terminating access records.

Nancy said that Qwest does have ways to either provide the access records or provide a surrogate for this information. In some cases, Qwest can provide the record off of the toll billing system as to how many minutes terminate to Eschelon. Nancy said that Qwest will pay terminating access at our tariffed rates. For Feature Group C signaling, terminating records may not be available. If not, Nancy said a surrogate process will be used. Nancy explained that, in Oregon and Washington, a data distribution center is used as the surrogate and Eschelon may participate in that process, which is run by the industry. She said that access records (Feature Group C) are submitted to the center, and the center acts as a clearinghouse. The records are sent to participants for billing. In Oregon, the center should be available in July of this year. In Washington, the center has been up for several years.

Bill asked why we were not told that these options were available to us. Nancy did not know. Bill also asked about the interim period until the Centers would be available to Eschelon. Nancy indicated that Qwest could use the process for measuring toll records that is being used in other states in the interim. Nancy agreed to work directly with Bill Markert to provide the information necessary for Eschelon to take advantage of these processes so that Eschelon may receive these access records and bill intraLATA access to Qwest.

Nancy said that she is in Oregon and has counterparts in Minnesota (Rita Knudson) and Washington (Bob Couture). She indicated that Qwest is reorganizing, after which all three will report to Dan Hult, who reports to Audrey McKenney. Nancy said that she would coordinate with her counterparts and respond to Bill, so that he doesn't have to deal with several different people.

Bill said that Mike Marshall of Qwest has said that, although he is not sure of the reason that Qwest is not providing intraLATA toll records for usage with a Qwest PIC as part of our platform agreement, he thought it could be that Qwest does not consider this to be switched

access. Nancy said that it may be the signaling issue and that she would talk to Mike about this issue.

#### NUMBER OF ACCESS MINUTES:

Rick Smith emphasized the vital importance to Eschelon of getting accurate information regarding the number of access minutes generated on Eschelon's platform lines. He explained that Eschelon considers the number provided by Qwest (approximately 288 minutes per platform line) to be dramatically and self-evidently low. Rick and Bill Markert said that they cannot find anything that suggests that such a number is accurate or reasonable. Regardless of the basis for comparison used, the number is just out of whack. Eschelon has looked at what we bill IXCs (excluding intraLATA toll), information from four other CLECs, and Qwest's corporate reports. Every check Eschelon makes verifies that 288 minutes is too low. Eschelon should be receiving between 50% and 100% more than that. Eschelon has also retained an outside company, at substantial expense, to conduct an audit. The longer that we cannot bill other carriers for the proper amount, the more of a problem this becomes.

Nancy said that she understands that we need to bill other carriers promptly and said that she would investigate this issue. She said that she is unfamiliar with our agreement but would review it.

Rick Smith thanked Nancy and emphasized how great it is to talk with someone who appears to understand the issue. He expressed frustration at not having received any response from Audrey McKenney to the messages that he has left for her regarding this important issue. He said that our agreement with Qwest provides that Qwest must pay Eschelon \$13.00 per platform line per month for any month during which Qwest fails to provide accurate daily usage information for Eschelon's use in billing switched access. Rick indicated that he does not want to invoke this provision and would prefer to receive accurate information. He said, however, that Eschelon may be forced to take this step soon if this issue is not resolved. Doing so could result in payments by Qwest of approximately \$600,000 per month. Rick Smith said that he would prefer to get accurate records and asked that Audrey discuss the issue with him and attempt to resolve it, by no later than their meeting on Tuesday morning. Kevin Saville said that Audrey is at a CompTel meeting in Florida, but he would try to reach her.

Nancy said that she understands that Eschelon is not receiving records for intraLATA toll (originating or terminating with Qwest PIC for platform lines and terminating with Qwest PIC for Eschelon's on-net lines) and agreed to investigate.

Bill pointed out that this issue, alone, will not explain all of the difference between the 288 minutes and the much larger number anticipated by Eschelon. Nancy said that she understood and would inquire.

#### RE-CAP

We ended the meeting by summarizing the three areas of discussion: (1) For originating access, Eschelon expects Qwest to pay valid originating intraLATA toll access and will provide to

Qwest revised usage and associated charges. Eschelon will also summarize the BNA practice in an email. (Alternatively, if Qwest decides that it does not desire to continue to provide intraLATA toll service to Eschelon's local customers, Qwest will provide a proposal to Eschelon for how Qwest would plan to legally transition these customers to Eschelon and hold harmless Eschelon from any claims associated with the proposed plan.) If the adjusted bill is as anticipated, Qwest and Eschelon can likely resolve this issue; (2) For access records, Nancy will provide to Bill the processes by which Eschelon may get records to allow Eschelon to get paid for these minutes; (3) For number of access minutes, Nancy will investigate, and Kevin will discuss with Audrey McKenney before our Tuesday meeting.

# EXHIBIT S-18

Arizona  
RT-00000F-02-0271  
STF 10-002S1

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 002S1

Name the companies that were Qwest's 3 largest wholesale customers in Arizona at the end of the year 2001. State which company was number one, two, and three.

RESPONSE:

OBJECTION:

Qwest objects to this request on the grounds that it is vague, overly broad, unduly burdensome, unlikely to lead to the discovery of admissible evidence and beyond the scope of this investigation.

Respondent: Legal

RESPONSE DATED 01/20/03:

Subject to and without waiving these objections, Qwest will provide the requested information as soon as the necessary permission has been obtained from the companies.

Respondent: Legal

SUPPLEMENTAL RESPONSE DATED 01/22/03:

See Highly Confidential Attachment.

Respondent: Legal

# EXHIBIT S-19

-----Original Message-----

From: Freddi Pennington [SMTP:ppennin@uswest.com]  
Sent: Wednesday, October 04, 2000 11:00 AM  
To: Judy Rixe: [frpowers@eschelon.com](mailto:frpowers@eschelon.com)  
Subject: Eschelon Revenue Commitment Incentive Plan

Judy / Lynne:

Sorry about the mix-up. Here is the correct presentation materials for the discussion with Audrey today. Please destroy previous documentation.

Thank you.

Freddi Pennington  
Resale/UNE-P/PAL Group Manager  
(303) 896-1049



Microsoft PowerPoint  
97

(See attached file: Rev. Eschelon Incentive Plan.ppt)

TO: JASON TOPP, QWEST  
FROM: ESCHELON TELECOM  
DATE: DECEMBER 14, 2001  
RE: ESCHELON CONSULTING SERVICES

## Eschelon Implementation and Consulting Teams

### Billing (Connectivity Billing) Team

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6249
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Copley	Ellen Copley	Cost & Revenue Analysis Manager	Accounting Department	(612) 436-6625
Honnila	Kay Honnila	CABS Manager	Accounting Department	(612) 436-6014
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	* Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Tomlinson	Melissa Tomlinson	Network Services Billing Manager	Management Information Systems	(612) 436-6616

### Collocation Team

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6249
Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Hanser	* Paul Hanser	Director of Switch Engineering	Engineering & Network Implementation	(612) 436-6405
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Lerma	Rene Lerma	Collocation Engineer	Engineering & Network Implementation	(612) 436-6403
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukkaruppan	Renga Muthukkaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

### Cutover (Loop Cutovers/Hotcuts) Team

Brolsma	Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	Bonnie Johnson	Network Provisioning Manager	Network Operations	(612) 436-6218
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Schiller	* Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

Eschelon 0000249

## Eschelon Implementation and Consulting Teams

### DSL Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Garlock	* Anne Garlock	Product Manager	Marketing	(612) 436-6450
Johnson	* Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Kolar	Steve Kolar	VP of Technology IP Services	Network Operations	(612) 436-6478
Ludke	Jay Ludke	Product Development Manager	Marketing	(612) 436-6246
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Solbrack	Steve Solbrack	Executive Vice President	Administration	(612) 436-6452
Walberg	Loren Walberg	Director of IP Provisioning & Technical	Provisioning	(612) 436-6453

### Held Orders (Lack or Reuse of Facilities) Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	* Bonnie Johnson	Network Provisioning Manager	Network Operations	(612) 436-6218
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
Schiller	Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

### Network (Interconnection Trunking, etc.) Team

Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Burdsall	Hal Burdsall	Operations Manager, WA & OR	Network Operations	(503) 793-9576
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Florek	Bruce Florek	Operations Manager, PHX/SLC	Network Operations	(602) 776-9053
Frey	Doug Frey	Manager of Network Facilities Eng.	Engineering & Network Implementation	(612) 436-6219
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukkaruppan	Renga Muthukkaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Nandakumar	* Kris Nandakumar	Director of Network Performance Eng.	Engineering & Network Implementation	(612) 436-6441
Patterson	David Patterson	Director of Resale Operations	Engineering & Network Implementation	(612) 436-6603
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

### Eschelon Implementation and Consulting Teams

**OSS Team**

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Goldberg	** Arlin Goldberg	Vice President Information Technology	Management Information Systems	(612) 436-6611
Johnson	*** Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642

**Repair Team**

Brolisma	Patrick Brolisma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
St. Peter	Chuck St. Peter	Senior Communications Analyst	Network Operations	(612) 436-6685
Walberg	*Loren Walberg	Director of Repair	Provisioning	(612) 436-6453

**UNE-P Team**

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Secrest	* Jonathan Secrest	Director of Product Marketing	Marketing	(612) 436-6049

State Of Minnesota  
 Department of Commerce  
 INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
 Information Requested By: Ferguson, Sharon  
 Date Requested: 11/27/2001  
 Date Response Due: 12/17/2001

REQUEST:

In agreement paragraph 3 of the "Confidential Amendment to Confidential/Trade Secret Stipulation" between Eschelon and Qwest (Q110041 - Q110048), Eschelon agrees to provide "consulting and network services" to Qwest in exchange for "an amount that is ten percent (10 percent) of the aggregated billed charges for all purchases made by Eschelon from Qwest from November 15, 2000 through December 31, 2005." Please answer the following with respect to this agreement:

- a. Describe in detail the nature of the consulting services actually provided by Eschelon, including whether those services relate to issues outside of the provisioning of telecommunication services to Eschelon.
- b. Identify any other CLEC to which Qwest has offered the opportunity to provide consulting services in exchange for billing refunds in Minnesota.
- c. Identify, by name and title, the consultants Eschelon has provided for Qwest.
- d. Identify, by name and title, the person at Qwest charged with responsibility for the Eschelon consulting relationship.
- e. Identify the amount of money paid to Eschelon by Qwest to date under the terms of this agreement.
- f. Identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the CLEC with billing refunds in exchange for services provided by the CLEC to Qwest. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please see Response to Request 66. In addition and in response to the particular questions of Request 67:

- a. Eschelon has provided wide ranging consulting services with respect to the creation of a UNE Star product reflected in its interconnection amendment dated November 15, 2001. Development of this product involved substantial effort by Qwest, and Qwest has used consulting services from Eschelon in an effort to make this product useful to CLEC customers and to improve Qwest's delivery of this product. UNE Star is something that is included in Qwest's interconnection agreement with Eschelon and is available to any CLEC wishing to opt-in to all of its terms. Attached as Trade Secret Attachment C is a list of consulting teams from Eschelon that performed work from Qwest. Those teams include:

1. OSS Team -- Responsible for evaluating and suggesting modification to operational support systems in connection with UNE Star.

2. UNE-P Team - Assisted and made recommendations for delivery and determining USOCs for features associated with UNE Star.

3. Billing Team - Assists and makes recommendations to Qwest regarding appropriate billing for UNE Star products given applicable Commission orders and decisions in multiple states and assisting in resolving issues associated with billing for UNE Star.

4. Collocation Team - Assists and suggests modifications for processes for addressing collocation issues in order to improve those processes.

5. Cutover Team - Studied and suggested changes to customer processes in order to decrease Qwest cutover times.

6. DSL Team - Assists Qwest in developing processes and methods for providing re-sale of DSL.

7. Held Order Team - Worked with Qwest in an effort to evaluate Qwest processes to reduce held orders.

8. Network/Interconnection Tracking Team - Assisted in working with Qwest on issues regarding how traffic is routed in the Seattle and Portland markets.

b. See the McLeod Agreement.

c. Please see Attachment C.

d. Kevin Saville and Steve Sheahan

e. Qwest is gathering this information and will provide it as soon as it is available.

f. The consulting arrangement with Eschelon uses bill refunds as a surrogate for hourly or other payments that might otherwise be paid to a consultant entering into an arrangement with Qwest. Accordingly, this agreement is not an exchange of a billing refund for services provided by the CLEC. Because this involves consulting services as opposed to an interconnection arrangement, this agreement term has not been included in an interconnection agreement amendment for the reasons set forth in response to Request 66.

**SUPPLEMENTAL RESPONSE 12/20/01:**

For the period of 11/15/00 through 03/31/01, the amount due to Eschelon is \$2,540,017.

**Eschelon Implementation and Consulting Teams**

**Billing (Connectivity Billing) Team**

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6249
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Copley	Ellen Copley	Cost & Revenue Analysis Manager	Accounting Department	(612) 436-6625
Honnilla	Kay Honnilla	CABS Manager	Accounting Department	(612) 436-6014
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	♦ Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Tomlinson	Melissa Tomlinson	Network Services Billing Manager	Management Information Systems	(612) 436-6616

**Collocation Team**

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6249
Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Hanser	♦ Paul Hanser	Director of Switch Engineering	Engineering & Network Implementation	(612) 436-6405
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukkaruppan	Renga Muthukkaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

**Cutover (Loop Cutovers/Hotcuts) Team**

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# EXHIBIT S-20

# EXHIBIT S-21

2001 WL 455869 (F.C.C.), 16 FCC Rcd. 9151

Federal Communications Commission (F.C.C.)

Order on Remand and Report and Order

IN THE MATTER OF IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS IN  
THE TELECOMMUNICATIONS ACT OF 1996

Intercarrier Compensation for ISP-Bound Traffic

CC Docket No. 96-98

CC Docket No. 99-68

FCC 01-131

Adopted: April 18, 2001

Released: April 27, 2001

\*9151 By the Commission: Chairman Powell issuing a statement; Commissioner Furchtgott-Roth dissenting and issuing a statement.

\*9152 I. INTRODUCTION

1. In this Order, we reconsider the proper treatment for purposes of intercarrier compensation of telecommunications traffic delivered to Internet service providers (ISPs). We previously found in the Declaratory Ruling [FN1] that such traffic is interstate traffic subject to the jurisdiction of the Commission under section 201 of the Act [FN2] and is not, therefore, subject to the reciprocal compensation provisions of section 251(b)(5). [FN3] The Court of Appeals for the District of Columbia Circuit held on appeal, however, that the Declaratory Ruling failed adequately to explain why our jurisdictional conclusion was relevant to the applicability of section 251(b)(5) \*9153 and remanded the issue for further consideration. [FN4] As explained in more detail below, we modify the analysis that led to our determination that ISP-bound traffic falls outside the scope of section 251(b)(5) and conclude that Congress excluded from the "telecommunications" traffic subject to reciprocal compensation the traffic identified in section 251(g), including traffic destined for ISPs. Having found, although for different reasons than before, that the provisions of section 251(b)(5) do not extend to ISP-bound traffic, we reaffirm our previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the Act, and we establish an appropriate cost recovery mechanism for the exchange of such traffic.

2. We recognize that the existing intercarrier compensation mechanism for the delivery of this traffic, in which the originating carrier pays the carrier that serves the ISP, has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets. As we discuss in the Unified Intercarrier Compensation NPRM, [FN5] released in tandem with this Order, such market distortions relate not only to ISP-bound traffic, but may result from any intercarrier compensation regime that allows a service provider to recover some of its costs from other carriers rather than from its end-users. Thus, the NPRM initiates a proceeding to consider, among other things, whether the Commission should replace existing intercarrier compensation schemes with some form of what has come to be known as "bill and keep." [FN6] The NPRM also considers modifications to existing payment regimes, in which the calling party's network pays the terminating network, that might limit the potential for market distortion. The regulatory arbitrage opportunities associated with intercarrier payments are particularly apparent with respect to ISP-bound traffic, however, because ISPs typically generate large



subsidizing one type of service at the expense of others.

6. Although we believe this arbitrage opportunity is particularly manifest with respect to ISP-bound traffic, we suggest in the NPRM that any compensation regime based on carrier-to-carrier payments may create similar market distortions. Accordingly, we initiate an inquiry as to whether bill and keep is a more economically efficient compensation scheme than the existing carrier-to-carrier payment mechanisms. Alternatively, the record developed in that proceeding may suggest modifications to carrier-to-carrier cost recovery mechanisms that address the competitive concerns identified above. Based upon the current record, however, bill and keep appears the preferable cost recovery mechanism for ISP-bound traffic because it eliminates a substantial opportunity for regulatory arbitrage. We do not fully adopt a bill and keep regime in this Order, however, because there are specific questions regarding bill and keep that require further inquiry, and we believe that a more complete record on these issues is desirable before requiring carriers to recover most of their costs from end-users. Because these questions are equally relevant to our evaluation of a bill and keep approach for other types of traffic, we will consider them in the context of the NPRM. Moreover, we believe that there are significant advantages to a global evaluation of the intercarrier compensation mechanisms applicable to different types of traffic to ensure a more systematic, symmetrical treatment of these issues.

7. Because the record indicates a need for immediate action with respect to ISP-bound traffic, however, in this Order we will implement an interim recovery scheme that: (i) moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism for ISP-bound by lowering payments and capping growth; and (ii) initiates a 36-month transition towards a complete bill and keep recovery mechanism while retaining the ability to adopt an alternative mechanism based upon a more extensive evaluation in the NPRM \*9156 proceeding. Specifically, we adopt a gradually declining cap on the amount that carriers may recover from other carriers for delivering ISP-bound traffic. We also cap the amount of traffic for which any such compensation is owed, in order to eliminate incentives to pursue new arbitrage opportunities. In sum, our goal in this Order is decreased reliance by carriers upon carrier-to-carrier payments and an increased reliance upon recovery of costs from end-users, consistent with the tentative conclusion in the NPRM that bill and keep is the appropriate intercarrier compensation mechanism for ISP-bound traffic. In this regard, we emphasize that the rate caps we impose are not intended to reflect the costs incurred by each carrier that delivers ISP traffic. Some carriers' costs may be higher; some are probably lower. Rather, we conclude, based upon all of the evidence in this record, that these rates are appropriate limits on the amounts recovered from other carriers and provide a reasonable transition from rates that have (at least until recently) typically been much higher. Carriers whose costs exceed these rates are (and will continue to be) able to collect additional amounts from their ISP customers. As we note above, and explain in more detail below, we believe that such end-user recovery likely is the most efficient mechanism.

8. The basic structure of this transition is as follows:

\* Beginning on the effective date of this Order, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of \$.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at \$.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at \$.0007/mou. Any additional costs incurred must be recovered from end-users. These rates reflect the downward trend in intercarrier compensation rates contained in recently negotiated interconnection agreements, suggesting that they are sufficient to provide a reasonable transition from dependence on intercarrier payments while ensuring cost recovery.

\* We also impose a cap on total ISP-bound minutes for which a local exchange carrier (LEC) may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may

receive compensation for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the 2002 ceiling. These caps are consistent with projections of the growth of dial-up Internet access for the first two years of the transition and are necessary to ensure that such growth does not undermine our goal of limiting intercarrier compensation and beginning a transition toward bill and keep. Growth above these caps should be based on a carrier's ability to provide efficient service, not on any incentive to collect intercarrier payments.

\* Because the transitional rates are caps on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of \*9157 compensation for this traffic). The rate caps are designed to provide a transition toward bill and keep, and no transition is necessary for carriers already exchanging traffic at rates below the caps.

\* In order to limit disputes and costly measures to identify ISP-bound traffic, we adopt a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic subject to the compensation mechanism set forth in this Order. This ratio is consistent with those adopted by state commissions to identify ISP or other convergent traffic that is subject to lower intercarrier compensation rates. Carriers that seek to rebut this presumption, by showing that traffic above the ratio is not ISP-bound traffic or, conversely, that traffic below the ratio is ISP-bound traffic, may seek appropriate relief from their state commissions pursuant to section 252 of the Act.

\* Finally, the rate caps for ISP-bound traffic (or such lower rates as have been imposed by states commissions for the exchange of ISP-bound traffic) apply only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. An incumbent LEC that does not offer to exchange section 251(b)(5) traffic at these rates must exchange ISP-bound traffic at the state-approved or state-negotiated reciprocal compensation rates reflected in their contracts. The record fails to demonstrate that there are inherent differences between the costs of delivering a voice call to a local end-user and a data call to an ISP, thus the "mirroring" rule we adopt here requires that incumbent LECs pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

### III. BACKGROUND

9. In the Declaratory Ruling released on February 26, 1999, we addressed the regulatory treatment of ISP-bound traffic. In that order, we reached several conclusions regarding the jurisdictional nature of this traffic, and we proposed several approaches to intercarrier compensation for ISP-bound traffic in an accompanying Intercarrier Compensation NPRM. The order, however, was vacated and remanded on appeal. [FN11] This Order, therefore, again focuses on the regulatory treatment of ISP-bound traffic and the appropriate intercarrier compensation regime for carriers that collaborate to deliver traffic to ISPs.

10. As we noted in the Declaratory Ruling, an ISP's end-user customers typically access the Internet through an ISP server located in the same local calling area. [FN12] Customers generally pay their LEC a flat monthly fee for use of the local exchange network, including connections to their local ISP. [FN13] They also generally pay their ISP a flat monthly fee for access to the Internet. [FN14] ISPs then combine "computer processing, information storage, protocol \*9158 conversion, and routing with transmission to enable users to access Internet content and services." [FN15]

11. ISPs, one class of enhanced service providers (ESPs), [FN16] also may utilize LEC services to provide their customers with access to the Internet. In the MTS/WATS Market Structure Order, the Commission acknowledged that ESPs were among a variety of users of LEC interstate access services. [FN17] Since 1983, however, the Commission has exempted ESPs from the payment of certain interstate access charges. [FN18] Consequently ESPs, including ISPs, are treated as end-users

for the purpose of applying access charges and are, therefore, entitled to pay local business rates for their connections to LEC central offices and the public switched telephone network (PSTN). [FN19] Thus, despite the Commission's understanding that ISPs use interstate access services, pursuant to the ESP exemption, the Commission has permitted ISPs to take service under local tariffs.

12. The 1996 Act set standards for the introduction of competition into the market for local telephone service, including requirements for interconnection of competing telecommunications carriers. [FN20] As a result of interconnection and growing local competition, more than one LEC may be involved in the delivery of telecommunications within a local service area. Section 251(b)(5) of the Act addresses the need for LECs to agree to terms for the mutual \*9159 exchange of traffic over their interconnecting networks. It specifically provides that LECs have the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." [FN21] The Commission determined, in the Local Competition Order, that section 251(b)(5) reciprocal compensation obligations "apply only to traffic that originates and terminates within a local area," as defined by state commissions. [FN22]

13. As a result of this determination, the question arose whether reciprocal compensation obligations apply to the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC. [FN23] The Commission determined at that time that resolution of this question turned on whether ISP-bound traffic "originates and terminates within a local area," as set forth in our rule. [FN24] Many competitive LECs argued that ISP-bound traffic is local traffic that terminates at the ISP's local server, where a second, packet-switched "call" then begins. [FN25] Thus, they argued, the reciprocal compensation obligations of section 251(b)(5) apply to this traffic. Incumbent LECs, on the other hand, argued that no reciprocal compensation is due because ISP-bound traffic is interstate telecommunications traffic that continues through the ISP server and terminates at the remote Internet sites accessed by ISP customers. [FN26]

14. The Commission concluded in the Declaratory Ruling that the jurisdictional nature of ISP-bound traffic should be determined, consistent with Commission precedent, by the end points of the communication. [FN27] Applying this "end-to-end" analysis, the Commission \*9160 determined that Internet communications originate with the ISP's end-user customer and continue beyond the local ISP server to websites or other servers and routers that are often located outside of the state. [FN28] The Commission found, therefore, that ISP-bound traffic is not local because it does not "originate[] and terminate[] within a local area." [FN29] Instead, it is jurisdictionally mixed and largely interstate, and, for that reason, the Commission found that the reciprocal compensation obligations of section 251(b)(5) do not apply to this traffic. [FN30]

15. Despite finding that ISP-bound traffic is largely interstate, the Commission concluded that it had not yet established a federal rule to govern intercarrier compensation for this traffic. [FN31] The Commission found that, in the absence of conflicting federal law, parties could voluntarily include ISP-bound traffic in their interconnection agreements under sections 251 and 252 of the Act. [FN32] It also found that, even though section 251(b)(5) does not require reciprocal compensation for ISP-bound traffic, nothing in the statute or our rules prohibits state commissions from determining in their arbitrations that reciprocal compensation for this traffic is appropriate, so long as there is no conflict with governing federal law. [FN33] Pending adoption of a federal rule, therefore, state commissions exercising their authority under section 252 to arbitrate, interpret, and enforce interconnection agreements would determine whether and how interconnecting carriers should be compensated for carrying ISP-bound traffic. [FN34] In the Intercarrier Compensation NPRM accompanying the Declaratory Ruling, the Commission requested comment on the most appropriate intercarrier compensation mechanism for ISP-bound traffic. [FN35]

16. On March 24, 2000, prior to release of a decision addressing these issues, the court of appeals vacated certain provisions of the Declaratory Ruling and remanded the matter to the Commission. [FN36] The court observed that, although "[t]here is no dispute that the Commission has \*9161 historically been justified in relying on this [end-to-end] method when determining whether a particular communication is jurisdictionally interstate," [FN37] the Commission had not adequately

explained why the jurisdictional analysis was dispositive of, or indeed relevant to, the question whether a call to an ISP is subject to the reciprocal compensation requirements of section 251(b)(5). [FN38] The court noted that the Commission had not applied its definition of "termination" to its analysis of the scope of section 251(b)(5), [FN39] and the court distinguished cases upon which the Commission relied in its end-to-end analysis because they involve continuous communications switched by interexchange carriers (IXCs), as opposed to ISPs, the latter of which are not telecommunications providers. [FN40] As an "independent reason" to vacate, the court also held that the Commission had failed to address how its conclusions "fit ... within the governing statute." [FN41] In particular, the court found that the Commission had failed to explain why ISP-bound traffic was not "telephone exchange service," as defined in the Act. [FN42]

17. In a public notice released June 23, 2000, the Commission sought comment on the issues raised by the court's remand. [FN43] The Public Notice specifically requested that parties comment on the jurisdictional nature of ISP-bound traffic, the scope of the reciprocal compensation requirement of section 251(b)(5), and the relevance of the concepts of "termination," "telephone exchange service," "exchange access service," and "information access." [FN44] It invited parties to update the record by responding to any ex parte presentations filed after the close of the reply period on April 27, 1999. It also sought comment on any new or innovative intercarrier compensation arrangements for ISP-bound traffic that parties may have considered or entered into during the pendency of the proceeding.

#### IV. DISCUSSION

##### A. Background

18. The nature and character of communications change over time. Over the last decade communications services have been radically altered by the advent of the Internet and the nature of Internet communications. Indeed, the Internet has given rise to new forms of communications such as e-mail, instant messaging, and other forms of digital, IP-based services. Many of these new services and formats have been layered over and integrated with the existing \*9162 public telephone systems. Most notably, Internet service providers have come into existence in order to facilitate mass market access to the Internet. A consumer with access to a standard phone line is able to communicate with the Internet, because an ISP converts the analog signal to digital and converts the communication to the IP protocol. This allows the user to access the global Internet infrastructure and communicate with users and websites throughout the world. In a narrowband context, the ISP facilitates access to this global network.

19. The Commission has struggled with how to treat Internet traffic for regulatory purposes, given the bevy of its rules premised on the architecture and characteristics of the mature public switched telephone network. For example, Internet consumers may stay on the network much longer than the design expectations of a network engineered primarily for voice communications. Additionally, the "bursty" nature of packet-switched communications skews the traditional assumptions of per minute pricing to which we are all accustomed. The regulatory challenges have become more acute as Internet usage has exploded. [FN45]

20. The issue of intercarrier compensation for Internet-bound traffic with which we are presently wrestling is a manifestation of this growing challenge. Traditionally, telephone carriers would interconnect with each other to deliver calls to each other's customers. It was generally assumed that traffic back and forth on these interconnected networks would be relatively balanced. Consequently, to compensate interconnecting carriers, mechanisms like reciprocal compensation were employed, whereby the carrier whose customer initiated the call would pay the other carrier the costs of using its network.

21. Internet usage has distorted the traditional assumptions because traffic to an ISP flows exclusively in one direction, creating an opportunity for regulatory arbitrage and leading to uneconomical results. Because traffic to ISPs flows one way, so does money in a reciprocal compensation regime. It was not

long before some LECs saw the opportunity to sign up ISPs as customers and collect, rather than pay, compensation because ISP modems do not generally call anyone in the exchange. In some instances, this led to classic regulatory arbitrage that had two troubling effects: (1) it created incentives for inefficient entry of LECs intent on serving ISPs exclusively and not offering viable local telephone competition, as Congress had intended to facilitate with the 1996 Act; (2) the large one-way flows of cash made it possible for LECs serving ISPs to afford to pay their own customers to use their services, potentially driving ISP rates to consumers to uneconomical levels. These effects prompted the Commission to consider the nature of ISP-bound traffic and to examine whether there was any flexibility under the statute to modify and address the pricing mechanisms for this traffic, given that there is a federal statutory provision authorizing reciprocal compensation. [FN46] In the Declaratory Ruling, the Commission concluded that Internet-bound traffic was jurisdictionally interstate and, thus, not subject to section 251(b)(5).

22. In *Bell Atlantic*, the court of appeals vacated the Declaratory Ruling and remanded the case to the Commission to determine whether ISP-bound traffic is subject to *\*9163* statutory reciprocal compensation requirements. The court held that the Commission failed to explain adequately why LECs did not have a duty to pay reciprocal compensation under section 251(b)(5) of the Act and remanded the case to the Commission.

## B. Statutory Analysis

23. In this section, we reexamine our findings in the Declaratory Ruling and conclude that ISP-bound traffic is not subject to the reciprocal compensation requirement in section 251(b) because of the carve-out provision in section 251(g), which excludes several enumerated categories of traffic from the universe of "telecommunications" referred to in section 251(b)(5). We explain our rationale and the interrelationship between these two statutory provisions in more detail below. We further conclude that section 251(i) affirms the Commission's role in continuing to develop appropriate pricing and compensation mechanisms for traffic -- such as Internet-bound traffic -- that travels over convergent, mixed, and new types of network architectures.

### 1. Introduction

24. In the Local Competition Order, the Commission determined that the reciprocal compensation provisions of section 251(b)(5) applied only to what it termed "local" traffic rather than to the transport and termination of interexchange traffic. [FN47] In the subsequent Declaratory Ruling, the Commission focused its discussion on whether ISP-bound traffic terminated within a local calling area such as to be properly considered "local" traffic. To resolve that issue, the Commission focused predominantly on an end-to-end jurisdictional analysis.

25. On review, the court accepted (without necessarily endorsing) the Commission's view that traffic was either "local" or "long distance" but faulted the Commission for failing to explain adequately why ISP-bound traffic was more properly categorized as long distance, rather than local. The Commission had attempted to do so by employing an end-to-end jurisdictional analysis of ISP traffic, rather than by evaluating the traffic under the statutory definitions of "telephone exchange service" and "exchange access." After acknowledging that the Commission "has historically been justified in relying on" end-to-end analysis for determining whether a communication is jurisdictionally interstate, the court stated: "But [the Commission] has yet to provide an explanation of why this inquiry is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs." [FN48] After reviewing the manner in which the Commission analyzed the parameters of section 251(b)(5) traffic in the Declaratory Ruling, the court found that the central issue was "whether a call to an ISP is local or long distance." [FN49] The court noted further that "[n]either category fits clearly." [FN50]

\*9164 26. Upon further review, we find that the Commission erred in focusing on the nature of the service (i.e., local or long distance) and in stating that there were only two forms of telecommunications services -- telephone exchange service and exchange access -- for purposes of interpreting the relevant scope of section 251(b)(5). [FN51] Those services are the only two expressly defined by the statute. The court found fault in the Commission's failure to analyze communications delivered by a LEC to an ISP in terms of these definitions. [FN52] Moreover, it cited the Commission's own confusing treatment of ISP-bound traffic as local under the ESP exemption and interstate for jurisdictional purposes. [FN53]

27. Part of the ambiguity identified by the court appears to arise from the ESP exemption, a long-standing Commission policy that affords one class of entities using interstate access -- information service providers -- the option of purchasing interstate access services on a flat-rated basis from intrastate local business tariffs, rather than from interstate access tariffs used by IXCs. Typically, information service providers have used this exemption to their advantage by choosing to pay local business rates, rather than the tariffed interstate access charges that other users of interstate access are required to pay. [FN54] In fending off challenges from those who argued that information service providers must be subject to access charges because they provide interexchange service, the Commission has often tried to walk the subtle line of arguing that the service provided by the LEC to the information service provider is an access service, but can justifiably be treated as akin to local telephone exchange service for purposes of the rates the LEC may charge. This balancing act reflected the historical view that there were only two kinds of intercarrier compensation: one for local telephone exchange service, and a second (access charges) for long distance services. Attempting to describe a hybrid service (the nature being an access service, but subject to a compensation mechanism historically limited to local service) was always a bit of mental gymnastics.

28. The court opinion underscores a tension between the jurisdictional nature of ISP-bound traffic, which the Commission has long held to be interstate, and the alternative compensation mechanism that the ESP exemption has permitted for this traffic. The court seems to recognize that, if an end-to-end analysis were properly applied to this traffic, this traffic would be predominantly interstate, and consequently "long distance." Yet it also questions whether this traffic should be considered "local" for purposes of section 251(b)(5) in light of the ESP exemption, by which the Commission has allowed information service providers at their option to be treated for compensation purposes (but not for jurisdictional purposes) as end-users.

29. The court also expresses consternation over what it perceives as an inconsistency in the Commission's reasoning. On the one hand, the court observes, the Commission has \*9165 argued that calls to ISPs are predominantly interstate for jurisdictional purposes because they terminate at the ultimate destination of the traffic in a distant website or e-mail server (i.e., the "one call theory"). On the other hand, the court notes, the Commission has defended the ESP exemption by analogizing an ISP to a high-volume business user, such as a pizza parlor or travel agent, that has different usage patterns and longer call holding times than the average customer. [FN55] The court questioned whether any such differences should not, as some commenters argued, lend support to treating this traffic as "local" for purposes of section 251(b)(5). As discussed in further detail below, while we continue to believe that retaining the ESP exemption is important in order to facilitate growth of Internet services, we conclude in section IV.C.1, *infra*, that reciprocal compensation for ISP-bound traffic distorts the development of competitive markets.

30. We respond to the court's concerns, and seek to resolve these tensions, by reexamining the grounds for our conclusion that ISP-bound traffic falls outside the scope of section 251(b)(5). A more comprehensive review of the statute reveals that Congress intended to exempt certain enumerated categories of service from section 251(b)(5) when the service was provided to interexchange carriers or information service providers. The exemption focuses not only on the nature of the service, but on to whom the service is provided. For services that qualify, compensation is based on rules, regulations, and policies that preceded the 1996 Act and not on section 251(b)(5), which was minted by the Act. As we explain more fully below, the service provided by LECs to deliver traffic to an ISP

constitutes, at a minimum, "information access" under section 251(g) and, thus, compensation for this service is not governed by section 251(b)(5), but instead by the Commission's policies for this traffic and the rules adopted under its section 201 authority. [FN56]

## 2. Section 251(g) Excludes Certain Categories of Traffic from the Scope of "Telecommunications" Subject to Section 251(b)(5)

### a. Background

31. Section 251(b)(5) imposes a duty on all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." [FN57] On its face, local exchange carriers are required to establish reciprocal \*9166 compensation arrangements for the transport and termination of all "telecommunications" they exchange with another telecommunications carrier, without exception. The Act separately defines "telecommunications" as the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." [FN58]

32. Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of all telecommunications traffic, -- i.e., whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal compensation obligations. Section 251(g) provides:

On or after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier ... shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the [Federal Communications] Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. [FN59]

33. The meaning of section 251(g) is admittedly not transparent. Indeed, section 251(g) clouds any plain reading of section 251(b)(5). Nevertheless, the Commission believes the two provisions can be read together consistently and in a manner faithful to Congress's intent. [FN60]

### b. Discussion

34. We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5). [FN61] Thus, the statute does not mandate reciprocal compensation for "exchange \*9167 access, information access, and exchange services for such access" provided to IXCs and information service providers. Because we interpret subsection (g) as a carve-out provision, the focus of our inquiry is on the universe of traffic that falls within subsection (g) and not the universe of traffic that falls within subsection (b)(5). This analysis differs from our analysis in the Local Competition Order, in which we attempted to describe the universe of traffic that falls within subsection (b)(5) as all "local" traffic. We also refrain from generically describing traffic as "local" traffic because the term "local," not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g).

35. We agree with the court that the issue before us requires more than just a jurisdictional analysis. Indeed, as the court recognized, the 1996 Act changed the historic relationship between the states and the federal government with respect to pricing matters. [FN62] Instead, we focus upon the statutory language of section 251(b) as limited by 251(g). We believe this approach is not only consistent with

the statute, but that it resolves the concerns expressed by the court in reviewing our previous analysis. Central to our modified analysis is the recognition that 251(g) is properly viewed as a limitation on the scope of section 251(b)(5) and that ISP-bound traffic falls under one or more of the categories set forth in section 251(g). For that reason, we conclude that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5). We reach that conclusion regardless of the compensation mechanism that may be in place for such traffic under the ESP exemption.

36. We believe that the specific provisions of section 251(g) demonstrate that Congress did not intend to interfere with the Commission's pre-Act authority over "nondiscriminatory interconnection ... obligations (including receipt of compensation)" [FN63] with respect to "exchange access, information access, and exchange services for such access" provided to IXCs or information service providers. We conclude that Congress specifically exempted the services enumerated under section 251(g) from the newly imposed reciprocal compensation requirement in order to ensure that section 251(b)(5) is not interpreted to override either existing or future regulations prescribed by the Commission. [FN64] We also find that ISP-bound traffic falls within at least one of the three enumerated categories in subsection (g).

\*9168 37. This limitation in section 251(g) makes sense when viewed in the overall context of the statute. All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access. [FN65] Before Congress enacted the 1996 Act, LECs provided access services to IXCs and to information service providers in order to connect calls that travel to points - both interstate and intrastate - beyond the local exchange. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. It makes sense that Congress did not intend to disrupt these pre-existing relationship. [FN66] Accordingly, Congress excluded all such access traffic from the purview of section 251(b)(5).

38. At least one court has already affirmed the principle that the standards and obligations set forth in section 251 are not intended automatically to supersede the Commission's authority over the services enumerated under section 251(g). This question arose in the Eighth Circuit Court of Appeals with respect to the access that LECs provide to IXCs to originate and terminate interstate long-distance calls. Citing section 251(g), the court concluded that the Act contemplates that "LECs will continue to provide exchange access to IXCs for long-distance service, and continue to receive payment, under the pre-Act regulations and rates." [FN67] In \*9169 CompTel, the IXCs had argued that the interstate access services that LECs provide properly fell within the scope of "interconnection" under section 251(c)(2), and that, notwithstanding the carve-out of section 251(g), access charges therefore should be governed by the cost-based standard of section 252(d)(1), rather than determined under the Commission's section 201 authority. The Eighth Circuit rejected that argument, holding that access service does not fall within the scope of section 251(c)(2), and observing that "it is clear from the Act that Congress did not intend all access charges to move to cost-based pricing, at least not immediately." [FN68] Neither the court nor the parties in CompTel distinguished between the situation in which one LEC provides access service (directly linking the end-user to the IXC) and the situation here in which two LECs collaborate to provide access to either an information service provider or IXC. In both circumstances, by its underlying rationale, CompTel serves as precedent for establishing that pre-existing regulatory treatment of the services enumerated under section 251(g) are carved out from the purview of section 251(b).

39. Accordingly, unless and until the Commission by regulation should determine otherwise, Congress preserved the pre-Act regulatory treatment of all the access services enumerated under section 251(g). These services thus remain subject to Commission jurisdiction under section 201 (or, to the extent they are intrastate services, they remain subject to the jurisdiction of state commissions), whether those obligations implicate pricing policies as in CompTel or reciprocal compensation. [FN69] This analysis properly applies to the access services that incumbent LECs provide (either individually or jointly with other local carriers) to connect subscribers with ISPs for Internet-bound traffic. Section 251(g) expressly preserves the Commission's rules and policies governing "access ...

to information service providers" in the same manner as rules and policies governing access to IXCs. [FN70] As we discuss in more detail \*9170 below, ISP-bound traffic falls under the rubric of "information access," a legacy term carried over from the MFJ. [FN71]

40. By its express terms, of course, section 251(g) permits the Commission to supersede pre-Act requirements for interstate access services. Therefore the Commission may make an affirmative determination to adopt rules that subject such traffic to obligations different than those that existed pre- Act. For example, consistent with that authority, the Commission has previously made the affirmative determination that certain categories of interstate access traffic should be subject to section 251(c)(4). [FN72] Similarly, in implementing section 251(c)(3), the Commission has required incumbent LECs to unbundle certain network elements used in the provision of xDSL-based services. [FN73] In this instance, however, for the reasons set forth below, [FN74] we decline to modify the restraints imposed by section 251(g) and instead continue to regulate ISP-bound traffic under section 201.

41. Some may argue that, although the Commission did not analyze subsection (g) in the Declaratory Ruling, a passing reference to section 251(g) in one paragraph of the Commission's brief filed with the court in that proceeding suggests that the argument we make here has been specifically rejected by the court. We disagree. Because our analysis of subsection (g) was not raised in the order, the court, under established precedent, probably did not consider the argument when rendering its decision. [FN75] Indeed, subsection (g) is not mentioned in the court's opinion.

### 3. ISP-Bound Traffic Falls within the Categories Enumerated in Section 251(g)

42. Having determined that section 251(g) serves as a limitation on the scope of "telecommunications" embraced by section 251(b)(5), the next step in our inquiry is to determine whether ISP-bound traffic falls within one or more of the categories specified in section 251(g): exchange access, information access, and exchange services for such access provided to IXCs and information service providers. Regardless of whether this traffic falls under the category of \*9171 "exchange access" -- an issue pending before the D.C. Circuit in a separate proceeding [FN76] -- we conclude that this traffic, at a minimum, falls under the rubric of "information access," a legacy term imported into the 1996 Act from the MFJ, but not expressly defined in the Communications Act.

#### a. Background

43. Section 251(g) by its terms indicates that, in the provision of exchange access, information access, and exchange services for such access to IXCs and information service providers, various pre-existing requirements and obligations "including receipt of compensation" are preserved, whether these obligations stem from "any court order, consent decree, or regulation, order or policy of the Commission." (Emphasis added.) Similarly, in discussing this provision, the Joint Explanatory Statement of the Committee of Conference explicitly refers to preserving the obligations under the "AT&T Consent Decree." [FN77]

#### b. Discussion

44. We conclude that Congress's reference to "information access" in section 251(g) was intended to incorporate the meaning of the phrase "information access" as used in the AT&T Consent Decree. [FN78] The ISP-bound traffic at issue here falls within that category because it is traffic destined for an information service provider. [FN79] Under the consent decree, "information access" was purchased by "information service providers" and was defined as "the provision of specialized exchange telecommunications services ... in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services." [FN80] We conclude that this definition of "information

access" was meant to include all access traffic that was routed by a LEC "to or from" providers of information services, of which ISPs are a subset. [FN81] The record in this \*9172 proceeding also supports our interpretation. [FN82] When Congress passed the 1996 Act, it adopted new terminology. The term "information access" is not, therefore, part of the new statutory framework. Because the legacy term "information access" in section 251(g) encompasses ISP-bound traffic, however, this traffic is excepted from the scope of the "telecommunications" subject to reciprocal compensation under section 251(b)(5).

45. We recognize, as noted earlier, that based on the rationale of the Declaratory Ruling, the court indicated that the question whether this traffic was "local or interstate" was critical to a determination of whether ISP-bound traffic should be subject to reciprocal compensation. [FN83] We believe that the court's assessment was a result of our statement in paragraph nine of the Declaratory Ruling that "when two carriers collaborate to complete a local call, the originating carrier is compensated by its end user and the terminating carrier is entitled to reciprocal compensation pursuant to section 251(b)(5) of the Act." [FN84] We were mistaken to have characterized the issue in that manner, rather than properly (and more naturally) interpreting the scope of "telecommunications" within section 251(b)(5) as being limited by section 251(g). By indicating that all "local calls," however defined, would be subject to reciprocal compensation obligations under the Act, we overlooked the interplay between these two inter-related provisions of section 251 -- subsections (b) and (g). Further, we created unnecessary ambiguity for ourselves, and the court, because the statute does not define the term "local call," and thus that term could be interpreted as meaning either traffic subject to local rates or traffic that is jurisdictionally intrastate. In the context of ISP-bound traffic, as the court observed, our use of the term "local" created a tension that undermined the prior order because the ESP \*9173 exemption permitted ISPs to purchase access through local business tariffs, [FN85] yet the jurisdictional nature of this traffic has long been recognized as interstate.

46. For similar reasons, we modify our analysis and conclusion in the Local Competition Order. [FN86] There we held that "[t]ransport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 251(d)(2)." We now hold that the telecommunications subject to those provisions are all such telecommunications not excluded by section 251(g). In the Local Competition Order, as in the subsequent Declaratory Ruling, use of the phrase "local traffic" created unnecessary ambiguities, and we correct that mistake here.

47. We note that the exchange of traffic between LECs and commercial mobile radio service (CMRS) providers is subject to a slightly different analysis. In the Local Competition Order, the Commission noted its jurisdiction to regulate LEC-CMRS interconnection under section 332 of the Act [FN87] but decided, at its option, to apply sections 251 and 252 to LEC-CMRS interconnection. [FN88] At that time, the Commission declined to delineate the precise contours of or the relationship between its jurisdiction over LEC-CMRS interconnection under sections 251 and 332, [FN89] but it made clear that it was not rejecting section 332 as an independent basis for jurisdiction. [FN90] The Commission went on to conclude that section 251(b)(5) obligations extend to traffic transmitted between LECs and CMRS providers, because the latter are telecommunications carriers. [FN91] The Commission also held that reciprocal compensation, rather than interstate or intrastate access charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA). [FN92] In so holding, the Commission expressly relied on its "authority under section 251(g) to preserve the current interstate access charge regime" to ensure that interstate access charges would be assessed only for traffic "currently subject to interstate access charges." [FN93] although the Commission's section 332 jurisdiction could serve as an alternative basis to reach this result. Thus the analysis we adopt in this Order, that section 251(g) limits the scope of section 251(b)(5), does not affect either the \*9174 application of the latter section to LEC-CMRS interconnection or our jurisdiction over LEC-CMRS interconnection under section 332.

#### 4. Section 251(i) Preserves the Commission's Authority to Regulate Interstate Access Services

48. Congress also included a "savings provision" - subpart (i) - in section 251, which provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201." [FN94] Under section 201, the Commission has the authority to regulate the interstate access services that LECs provide to connect end-users with IXCs or information service providers to originate and terminate calls that travel across state lines.

49. We conclude that subpart (i) provides additional support for our finding that Congress has granted us the authority on a going-forward basis to establish a compensation regime for ISP-bound traffic. [FN95] When read as a whole, the most natural reading of section 251 is as follows: subsection (b) sets forth reciprocal compensation requirements for the transport and termination of "telecommunications"; subsection (g) excludes certain access services (including ISP-bound traffic) from that requirement; and subsection (i) ensures that, on a going-forward basis, the Commission has the authority to establish pricing for, and otherwise to regulate, interstate access services.

50. When viewed in the overall context of section 251, subsections (g) and (i) serve compatible, but different, purposes. Subsection (g) preserves rules and regulations that existed at the time Congress passed the 1996 Act, and thus functions primarily as a "backward-looking" provision (although it does grant the Commission the authority to supersede existing regulations). In contrast, we interpret section 251(i) to be a "forward-looking" provision. Thus, subsection (i) expressly affirms the Commission's role in an evolving telecommunications marketplace, in which Congress anticipates that the Commission will continue to develop appropriate pricing and compensation mechanisms for traffic that falls within the purview of section 201. This reading of section 251 is consistent with the notion that section 251 generally broadens the Commission's duties, particularly in the pricing context. [FN96]

51. We expect that, as new network architectures emerge, the nature of telecommunications traffic will continue to evolve. As we have already observed, since Congress passed the 1996 Act, customer usage patterns have changed dramatically; carriers are sending traffic over networks in new and different formats; and manufacturers are adding creative features and developing innovative network architectures. Although we cannot \*9175 anticipate the direction that new technology will take us, we do expect the dramatic pace of change to continue. Congress clearly did not expect the dynamic, digital broadband driven telecommunications marketplace to be hindered by rules premised on legacy networks and technological assumptions that are no longer valid. Section 251(i), together with section 201, equips the Commission with the tools to ensure that the regulatory environment keeps pace with innovation.

##### 5. ISP-Bound Traffic Falls Within the Purview of the Commission's Section 201 Authority

52. Having found that ISP-bound traffic is excluded from section 251(b)(5) by section 251(g), we find that the Commission has the authority pursuant to section 201 to establish rules governing intercarrier compensation for such traffic. Under section 201, the Commission has long exercised its jurisdictional authority to regulate the interstate access services that LECs provide to connect callers with IXCs or ISPs to originate or terminate calls that travel across state lines. Access services to ISPs for Internet-bound traffic are no exception. The Commission has held, and the Eighth Circuit has recently concurred, that traffic bound for information service providers (including Internet access traffic) often has an interstate component. [FN97] Indeed, that court observed that, although some traffic destined for information service providers (including ISPs) may be intrastate, the interstate and intrastate components cannot be reliably separated. [FN98] Thus, ISP traffic is properly classified as interstate, [FN99] and it falls under the Commission's section 201 jurisdiction. [FN100]

53. In its opinion remanding this proceeding, the court appeared to acknowledge that the end-to-end analysis was appropriate for determining the scope of the Commission's jurisdiction under section 201, stating that "[t]here is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate." [FN101] The court nevertheless found that we had not supplied a logical nexus between

the jurisdictional end-to-end analysis (which delineates the contours of our section 201 authority) and our interpretation of the scope of section 251(b)(5). In that regard, the court appeared not to question the Commission's longstanding assertion of jurisdiction over ESP traffic, of which Internet-bound traffic is a subset. [FN102] It did, however, unambiguously question whether, for purposes of interpreting section 251(b)(5), the \*9176 jurisdictional end-to-end analysis was dispositive.

Accordingly, the court explained its basis for remand as follows: "Because the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling [in interpreting the scope of section 251(b)(5)] ... we must vacate the ruling and remand the case." [FN103]

54. As explained above, we no longer construe section 251(b)(5) using the dichotomy set forth in the Declaratory Ruling between "local" traffic and interstate traffic. Rather, we have clarified that the proper analysis hinges on section 251(g), which limits the reach of the reciprocal compensation regime mandated in section 251(b). Thus our discussion no longer centers on the jurisdictional inquiry set forth in the underlying order. Nonetheless, we take this opportunity to respond to questions raised by the court regarding the differences between ISP-bound traffic (which we have always held to be predominantly interstate for jurisdictional purposes) and intrastate calls to "communications-intensive business end user[s]," [FN104] such as travel agencies and pizza parlors.

55. Contrary to the arguments made by some IXCs, the Commission has been consistent in its jurisdictional treatment of ISP-bound traffic. For compensation purposes, in order to create a regulatory environment that will allow new and innovative services to flourish, the Commission has exempted enhanced service providers (including ISPs) from paying for interstate access service at the usage-based rates charged to IXCs. [FN105] The ESP exemption was and remains an affirmative exercise of federal regulatory authority over interstate access service under section 201, and, in affirming pricing under that exemption, the D.C. Circuit expressly recognized that ESPs use interstate access service. [FN106] Moreover, notwithstanding the ESP exemption, the Commission has always permitted enhanced service providers, including ISPs, to purchase their interstate access out of interstate tariffs -- thus underscoring the Commission's \*9177 consistent view that the link LECs provide to connect subscribers with ESPs is an interstate access service. [FN107]

56. We do not believe that the court's decision to remand the Declaratory Ruling reflects a finding that such traffic constitutes two calls, rather than a single end-to-end call, for jurisdictional purposes. The court expressly acknowledged that "the end-to-end analysis applied by the Commission here is one that it has traditionally used to determine whether a call is within its interstate jurisdiction." [FN108] The court also said that "[t]here is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate." [FN109] And the court appeared to suggest, at least for the sake of argument, that the Commission had not misapplied that analysis as a jurisdictional matter in finding that ISP-bound traffic was interstate. [FN110] We do recognize, however, that the court was concerned by how one would categorize this traffic under our prior interpretation of section 251(b)(5), which focused on whether or not ISP-bound calls were "local." That inquiry arguably implicated the compensation mechanism for the traffic (which included a local component), as well as the meaning of the term "termination" in the specific context of section 251(b); but neither of these issues is germane to our assertion of jurisdiction here under our section 201 authority.

57. For jurisdictional purposes, the Commission views LEC-provided access to enhanced services providers, including ISPs, on the basis of the end points of the communication, rather than intermediate points of switching or exchanges between carriers (or other providers). [FN111] Thus, in the ONA Plans Order, the Commission emphasized that "when an enhanced service is interstate (that is, when it involves communications or transmissions between points in different states on an end-to-end basis), the underlying basic services are subject to [our jurisdiction]." [FN112] Consistent with that view, when end-to-end communications involving \*9178 enhanced service providers cross state lines, the Commission has categorized the link that the LEC provides to connect the end-user with an enhanced service provider as interstate access service. [FN113] Internet service providers are a class of ESPs. Accordingly, the LEC-provided link between an end-user and an ISP is properly

characterized as interstate access. [FN114]

58. Most Internet-bound traffic traveling between a LEC's subscriber and an ISP is indisputably interstate in nature when viewed on an end-to-end basis. Users on the Internet are interacting with a global network of connected computers. The consumer contracts with an ISP to provide access to the Internet. Typically, when the customer wishes to interact with a person, content, or computer, the customer's computer calls a number provided by the ISP that is assigned to an ISP modem bank. The ISP modem answers the call (the familiar squelch of computers handshaking). The user initiates a communication over the Internet by transmitting a command. In the case of the web, the user requests a webpage. This request may be sent to the computer that hosts the webpage. In real time, the web host may request that different pieces of that webpage, which can be stored on different servers across the Internet, be sent, also in real time, to the user. For example, on a sports page, only the format of the webpage may be stored at the host computer in Chicago. The advertisement may come from a computer in California (and it may be a different advertisement each time the page is requested), the sports scores may come from a computer in New York City, and a part of the webpage that measures Internet traffic and records the user's visit may involve a computer in Virginia. If the user decides to buy something from this webpage, say a sports jersey, the user clicks on the purchase page and may be transferred to a secure web server in Maryland for the transaction. A single web address frequently results in the return of information from multiple computers in various locations globally. These different pieces of the webpage will be sent to the user over different network paths and assembled on the user's display. [FN115]

59. The "communication" taking place is between the dial-up customer and the global computer network of web content, e-mail authors, game room participants, databases, or bulletin board contributors. Consumers would be perplexed to learn regulators believe they are communicating with ISP modems, rather than the buddies on their e-mail lists. The proper focus for identifying a communication needs to be the user interacting with a desired webpage, friend, game, or chat room, not on the increasingly mystifying technical and mechanical activity in the middle that makes the communication possible. [FN116] ISPs, in most cases, provide services that \*9179 permit the dial-up Internet user to communicate directly with some distant site or party (other than the ISP) that the caller has specified.

60. ISP service is analogous, though not identical, to long distance calling service. An AT&T long distance customer contracts with AT&T to facilitate communications to out-of-state locations. The customer uses the local network to reach AT&T's facilities (its point of presence). By dialing "1" and an area code, the customer is in essence addressing his call to an out of state party and is instructing his LEC to deliver the call to his long distance carrier, and instructing the long distance carrier to pick up and carry that call to his intended destination. The caller on the other end will pick up the phone and respond to the caller. The communication will be between these two end-users. This analogy is not meant to prove that ISP service is identical to long distance service, but is used merely to bolster, by analogy, the reasonableness of not characterizing an ISP as the destination of a call, but as a facilitator of communication.

61. Moreover, as the local exchange carriers have correctly observed, the technical configurations for establishing dial-up Internet connections are quite similar to certain network configurations employed to initiate more traditional long-distance calls. [FN117] In most cases, an ISP's customer first dials a seven-digit number to connect to the ISP server before connecting to a website. Long-distance service in some network configurations is initiated in a substantially similar manner. In particular, under "Feature Group A" access, the caller first dials a seven-digit number to reach the IXC, and then dials a password and the called party's area code and number to complete the call. Notwithstanding this dialing sequence, the service the LEC provides is considered interstate access service, not a separate local call. [FN118] Internet calls operate in a similar manner: after reaching the ISP's server by dialing a seven-digit number, the caller selects a website (which is identified by a 12-digit Internet address, but which often is, in effect, "speed dialed" by clicking an icon) and the ISP connects the caller to the selected website. Such calling should yield the same jurisdictional result as the analogous calls to

IXCs using "Feature Group A" access.

62. Commission precedent also rejects the two-call theory in the context of calls involving enhanced services. In *BellSouth MemoryCall*, the Commission preempted a state commission order that had prohibited BellSouth from expanding its voice mail service -- an enhanced service -- beyond its existing customers. [FN119] In doing so, it rejected claims by the state that the Commission lacked jurisdiction to preempt because, allegedly, out-of-state calls to the voice mail service really constituted two calls: an interstate call from the out-of-state caller to the telephone company switch that routes the call to the intended recipient's location, and a separate intrastate call that forwards the communication from the switch to the voice mail apparatus in the event that the called party did not answer. [FN120] The Commission explained that, \*9180 whether a basic telecommunications service is at issue, or whether an enhanced service rides on the telephone company's telecommunications service, the Commission's jurisdiction does not end at the local switchboard, but continues to the ultimate destination of the call. [FN121]

63. The Internet communication is not analogous to traditional telephone exchange services. Local calls set up communication between two parties that reside in the same local calling area. Prior to the introduction of local competition, that call would never leave the network of the incumbent LEC. As other carriers were permitted to enter the local market, a call might cross two or more carriers' networks simply because the two parties to the communication subscribed to two different local carriers. The two parties intending to communicate, however, remained squarely in the same local calling area. An Internet communication is not simply a local call from a consumer to a machine that is lopsided, that is, a local call where one party does most of the calling, or most of the talking. ISPs are service providers that technically modify and translate communication, so that their customers will be able to interact with computers across the global Internet. [FN122]

64. The court in *Bell Atlantic* noted that FCC litigation counsel had differentiated ISP-bound traffic from ordinary long-distance calls by stating that the former "is really like a call to a local business" -- such as a pizza delivery firm, a travel reservation agency, a credit card verification firm, or a taxicab company -- "that then uses the telephone to order wares to meet the need." [FN123] We find, however, that this citation to a former litigation position does not require us to alter our analysis. First, the Commission itself has never analogized ISP-bound traffic in the manner cited in the agency's brief in *Southwestern Bell*. Indeed, in the particular order that the Commission was defending in *Southwestern Bell*, the Commission distinguished ISP-bound traffic from other access traffic on other grounds -- e.g., call direction and call holding times [FN124] -- which have no arguable bearing on whether the traffic is one interstate call (as the Commission has always held) or two separate calls (one of which allegedly is intrastate) as some parties have contended. Second, the cited portion of the Commission's brief was not addressing jurisdiction at all. Rather, the brief was responding to a claim that the ESP exemption discriminated against IXCs and in favor of ISPs. [FN125] Finally, in the very case in which litigation counsel made the cited analogy, the Eighth Circuit affirmed the Commission's consistent view that ISP-bound traffic is, as a jurisdictional matter, predominantly interstate. [FN126] In any event, to the extent that our prior briefs could be read to conceptualize the nature of ISP service as local, akin to intense users of \*9181 local service, we now embrace a different conceptualization that we believe more accurately reflects the nature of ISP service.

65. For the foregoing reasons, consistent with our longstanding precedent, we find that we continue to have jurisdiction under section 201, as preserved by section 251(i), to provide a compensation mechanism for ISP-bound traffic.

### C. Efficient Inter-carrier Compensation Rates and Rate Structures

66. Carriers currently recover the costs of call transport and termination through some combination of carrier access charges, reciprocal compensation, and end-user charges, depending upon the applicable regulatory regime. Having concluded that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5), we must now determine, pursuant to our section 201

authority, what compensation mechanism is appropriate when carriers collaborate to deliver calls to ISPs. In the companion NPRM, we consider the desirability of adopting a uniform intercarrier compensation mechanism, applicable to all traffic exchanged among telecommunications carriers, and, in that context, we intend to examine the merits of a bill and keep regime for all types of traffic, including ISP-bound traffic. In the meantime, however, we must adopt an interim intercarrier compensation rule to govern the exchange of ISP-bound traffic, pending the outcome of the NPRM. In particular, we must decide whether to impose (i) a "calling-party's-network-pays" (CPNP) regime, like reciprocal compensation, in which the calling party's network pays the network serving the ISP; (ii) a bill and keep regime in which all networks recover costs from their end-user customers and are obligated to deliver calls that originate on the networks of interconnecting carriers; or (iii) some other cost recovery mechanism. As set forth more fully below, our immediate goal in adopting an interim compensation mechanism is to address the market distortions created by the prevailing intercarrier compensation regime, even as we evaluate in a parallel proceeding what longer-term intercarrier compensation mechanisms are appropriate for this and other types of traffic.

### 1. CPNP Regimes Have Distorted the Development of Competitive Markets

67. For the reasons detailed below, we believe that a bill and keep approach to recovering the costs of delivering ISP-bound traffic is likely to be more economically efficient than recovering these costs from originating carriers. In particular, requiring carriers to recover the costs of delivering traffic to ISP customers directly from those customers is likely to send appropriate market signals and substantially eliminate existing opportunities for regulatory arbitrage. As noted above, we consider issues related to the broader application of bill and keep as an intercarrier compensation regime in conjunction with the NPRM that we are adopting concurrently with this Order. In this Order, however, we adopt an interim compensation mechanism for the delivery of ISP-bound traffic that addresses the regulatory arbitrage opportunities present in the existing carrier-to-carrier payments by limiting carriers' opportunity to recover costs from other carriers and requiring them to recover a greater share of their costs from their ISP customers.

68. In most states, reciprocal compensation governs the exchange of ISP-bound traffic \*9182 between local carriers. [FN127] Reciprocal compensation is a CPNP regime in which the originating carrier pays an interconnecting carrier for "transport and termination," i.e., for transport from the networks' point of interconnection and for any tandem and end-office switching. [FN128] The central problem with any CPNP regime is that carriers recover their costs not only from their end-user customers, but also from other carriers. [FN129] Because intercarrier compensation rates do not reflect the degree to which the carrier can recover costs from its end-users, payments from other carriers may enable a carrier to offer service to its customers at rates that bear little relationship to its actual costs, thereby gaining an advantage over its competitors. Carriers thus have the incentive to seek out customers, including but not limited to ISPs, with high volumes of incoming traffic that will generate high reciprocal compensation payments. [FN130] To the extent that carriers offer these customers below cost retail rates subsidized by intercarrier compensation, these customers do not receive accurate price signals. Moreover, because the originating LEC typically charges its customers averaged rates, the originating end-user receives inaccurate price signals as the costs associated with the intercarrier payments are recovered through rates averaged across all of the originating carrier's end-users. Thus no subscriber faces a price that fully reflects the intercarrier payments. An ISP subscriber with extensive Internet usage may, for example, cause her LEC to incur substantial reciprocal compensation obligations to the LEC that serves her ISP, but that subscriber receives no price signals reflecting those costs because they are spread over all of her LEC's customers.

69. The resulting market distortions are most apparent in the case of ISP-bound traffic due primarily to the one-way nature of this traffic, and to the tremendous growth in dial-up Internet access since passage of the 1996 Act. Competitive carriers, regardless of the nature of their customer base, exchange traffic with the incumbent LECs at rates based on the incumbents' costs. [FN131] To the

extent the traffic exchange is roughly balanced, as is typically the case when LECs exchange voice traffic, it matters little if rates reflect costs because payments in one direction are largely offset by payments in the other direction. The rapid growth in dial-up Internet use, however, created the opportunity to serve customers with large volumes of \*9183 exclusively incoming traffic. And, for the reasons discussed above, the reciprocal compensation regime created an incentive to target those customers with little regard to the costs of serving them - because a carrier would be able to collect some or all of those costs from other carriers that would themselves be unable to flow these costs through to their own customers in a cost-causative manner.

70. The record is replete with evidence that reciprocal compensation provides enormous incentive for CLECs to target ISP customers. The four largest ILECs indicate that CLECs, on average, terminate eighteen times more traffic than they originate, resulting in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which is for ISP-bound traffic. [FN132] Verizon states that it sends CLECs, on average, twenty-one times more traffic than it receives, and some CLECs receive more than forty times more traffic than they originate. [FN133] Although there may be sound business reasons for a CLEC's decision to serve a particular niche market, the record strongly suggests that CLECs target ISPs in large part because of the availability of reciprocal compensation payments. [FN134] Indeed, some ISPs even seek to become CLECs in order to share in the reciprocal compensation windfall, and, for a small number of entities, this revenue stream provided an inducement to fraudulent schemes to generate dial-up minutes. [FN135]

71. For these reasons, we believe that the application of a CPNP regime, such as reciprocal compensation, to ISP-bound traffic undermines the operation of competitive markets. [FN136] ISPs do not receive accurate price signals from carriers that compete, not on the basis of the quality and efficiency of the services they provide, but on the basis of their ability to shift costs to other carriers. Efficient prices result when carriers offer the lowest possible rates based on the costs of the service they provide to ISPs, not when they can price their services without regard to cost. We are concerned that viable, long-term competition among efficient providers of local exchange and exchange access services cannot be sustained where the intercarrier compensation regime does not reward efficiency and may produce retail rates that do not reflect the costs of the services provided. As we explain in greater detail in the companion NPRM, we \*9184 believe that a compensation regime, such as bill and keep, that requires carriers to recover more of their costs from end-users may avoid these problems.

72. We acknowledge that we did not always hold this view. In the Local Competition Order, the Commission concluded that state commissions may impose bill and keep arrangements for traffic subject to section 251(b)(5) only when the flow of traffic between interconnected carriers is roughly balanced and is expected to remain so. [FN137] The Commission reasoned that "bill-and-keep arrangements are not economically efficient because they distort carriers' incentives, encouraging them to overuse competing carriers' termination facilities by seeking customers that primarily originate traffic." [FN138] The concerns about the opportunity for cost recovery and economic efficiency are not present, however, to the extent that traffic between carriers is balanced and payments from one carrier will be offset by payments from the other carrier. In these circumstances, the Commission found that bill and keep arrangements may minimize administrative burdens and transaction costs. [FN139]

73. Since that time, we have observed the development of competition in the local exchange market, and we now believe that the Commission's concerns about economic inefficiencies associated with bill and keep missed the mark, particularly as applied to ISP-bound traffic. The Commission appears to have assumed, at least implicitly, that the calling party was the sole cost causer of the call, and it may have overstated any incentives that a bill and keep regime creates to target customers that primarily originate traffic. A carrier must provide originating switching functions and must recover the costs of those functions from the originating end-user, not from other carriers. Originating traffic thus lacks the same opportunity for cost-shifting that reciprocal compensation provides with respect to serving customers with disproportionately incoming traffic. Indeed, it has become apparent that the

obligation to pay reciprocal compensation to interconnecting carriers may give rise to uneconomic incentives. As the current controversy about ISP-bound traffic demonstrates, reciprocal compensation encourages carriers to overuse competing carriers' origination facilities by seeking customers that receive high volumes of traffic.

74. We believe that a bill and keep regime for ISP-bound traffic may eliminate these incentives and concomitant opportunity for regulatory arbitrage by forcing carriers to look only to their ISP customers, rather than to other carriers, for cost recovery. As a result, the rates paid by ISPs and, consequently, their customers should better reflect the costs of services to which they subscribe. Potential subscribers should receive more accurate price signals, and the market should reward efficient providers. [FN140] Although we do not reach any firm conclusions about bill and keep as a permanent mechanism for this or any other traffic, our evaluation of the record evidence to date strongly suggests that bill and keep is likely to provide a viable solution to the \*9185 market distortions caused by the application of reciprocal compensation to ISP-bound traffic. We take that observation into account, below, as we fashion an interim compensation mechanism for this traffic.

75. Bill and keep also may address the problem regulators face in setting intercarrier compensation rates that correlate to the costs carriers incur to carry traffic that originates on other networks. The record suggests that market distortions appear to have been exacerbated by the prevalence of excessively high reciprocal compensation rates. Many CLECs argue that the current traffic imbalances between CLECs and ILECs are the product of greediness on the part of ILECs that insisted on above-cost reciprocal compensation rates in the course of negotiating or arbitrating initial interconnection agreements. [FN141] CLECs argue that, because these rates were artificially high, they naturally responded by seeking customers with large volumes of incoming traffic. If the parties or regulatory bodies merely set cost-based rates and rate structures, they argue, arbitrage opportunities and the resulting windfalls would disappear. [FN142] They note that reciprocal compensation rates have fallen dramatically as initial agreements expire and the parties negotiate new agreements. [FN143]

76. We do not believe that the solution to the current problem is as simple as the CLECs suggest. [FN144] We seek comment in the accompanying NPRM on the potential for a modified CPNP regime, such as the CLECs advocate, to solve some of the problems we identify here. We are convinced, however, that intercarrier payments for ISP-bound traffic have created severe market distortions. Although it would be premature to institute a full bill and keep regime before resolving the questions presented in the NPRM, [FN145] in seeking to remedy an exigent market problem, we cannot ignore the evidence we have accumulated to date that suggests that a bill and keep regime has very fundamental advantages over a CPNP regime for ISP-bound traffic. Contrary to the view espoused by CLECs, we are concerned that the market distortions caused by applying a CPNP regime to ISP-bound traffic cannot be cured by regulators or carriers simply attempting to "get the rate right." A few examples may illustrate the vexing problems regulators face. Reciprocal compensation rates have been determined on the basis of the ILEC's average costs of transport and termination. These rates do not, therefore, reflect the costs incurred by any \*9186 particular carrier for providing service to a particular customer. This encourages carriers to target customers that are, on average, less costly to serve, and reap a reciprocal compensation windfall. Conversely, new entrants lack incentive to serve customers that are, on average, more costly to serve, even if the new entrant is the most efficient provider. It is not evident that this problem can be remedied by setting reciprocal compensation rates on the basis of the costs of carrier serving the called party (or, in the case of ISP-bound traffic, the CLEC that serves the ISP). [FN146] Apart from our reluctance to require new entrants to perform cost studies, it is entirely impracticable, if not impossible, for regulators to set different intercarrier compensation rates for each individual carrier, and those rates still might fail to reflect a carrier's costs as, for example, the nature of its customer base evolves. Furthermore, most states have adopted per minute reciprocal compensation rate structures. It is unlikely that any minute-of-use rate that is based on average costs and depends upon demand projections will reflect the costs of any given carrier to serve any particular customer. To the extent that transport and termination costs are capacity-driven,

moreover, virtually any minute-of-use rate will overestimate the cost of handling an additional call whenever a carrier is operating below peak capacity. [FN147] Regulators and carriers have long struggled with problems associated with peak-load pricing. [FN148] Finally, and most important, the fundamental problem with application of reciprocal compensation to ISP-bound traffic is that the intercarrier payments fail altogether to account for a carrier's opportunity to recover costs from its ISP customers. Modifications to intercarrier rate levels or rate structures suggested by CLECs do not address carriers' ability to shift costs from their own customers onto other carriers and their customers.

## 2. Intercarrier Compensation for ISP-bound Traffic

77. We believe that a hybrid mechanism that establishes relatively low per minute rates, with a cap on the total volume of traffic entitled to such compensation, is the most appropriate interim approach over the near term to resolve the problems associated with the current intercarrier compensation regime for ISP-bound traffic. Our primary goal at this time is to address the market distortions under the current intercarrier compensation regimes for ISP-bound traffic. At the same time, we believe it prudent to avoid a "flash cut" to a new compensation regime that would upset the legitimate business expectations of carriers and their customers. Subsequent to the Commission's Declaratory Ruling, many states have required the payment of reciprocal compensation for ISP-bound traffic, and CLECs may have entered into contracts with vendors or with their ISP customers that reflect the expectation that the CLECs would continue to receive reciprocal compensation revenue. We believe it appropriate, in tailoring an interim compensation mechanism, to take those expectations into account while simultaneously establishing rates that will produce more accurate price signals and substantially reduce current market distortions. Therefore, pending our consideration of broader intercarrier compensation issues in the NPRM, we impose an interim intercarrier compensation regime for <sup>\*9187</sup> ISP-bound traffic that serves to limit, if not end, the opportunity for regulatory arbitrage, while avoiding a market-disruptive "flash cut" to a pure bill and keep regime. The interim regime we establish here will govern intercarrier compensation for ISP-bound traffic until we have resolved the issues raised in the intercarrier compensation NPRM.

78. Beginning on the effective date of this Order, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of \$.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at \$.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at \$.0007/mou. In addition to the rate caps, we will impose a cap on total ISP-bound minutes for which a LEC may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement. [FN149]

79. We understand that some carriers are unable to identify ISP-bound traffic. In order to limit disputes and avoid costly efforts to identify this traffic, we adopt a rebuttable presumption that traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation mechanism set forth in this Order. Using a rebuttable presumption in this context is consistent with the approach that numerous states have adopted to identify ISP-bound traffic or "convergent" traffic (including ISP traffic) that is subject to a lower reciprocal compensation rate. [FN150] A carrier may rebut the presumption, for

example, by demonstrating to the appropriate state commission that traffic above the 3:1 ratio is in fact local traffic delivered to non-ISP customers. In that case, the state commission will order payment of the state-approved or state-\*9188 arbitrated reciprocal compensation rates for that traffic. Conversely, if a carrier can demonstrate to the state commission that traffic it delivers to another carrier is ISP-bound traffic, even though it does not exceed the 3:1 ratio, the state commission will relieve the originating carrier of reciprocal compensation payments for that traffic, which is subject instead to the compensation regime set forth in this Order. During the pendency of any such proceedings, LECs remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in this Order for traffic above the ratio), subject to true-up upon the conclusion of state commission proceedings.

80. We acknowledge that carriers incur costs in delivering traffic to ISPs, and it may be that in some instances those costs exceed the rate caps we adopt here. To the extent a LEC's costs of transporting and terminating this traffic exceed the applicable rate caps, however, it may recover those amounts from its own end-users. [FN151] We also clarify that, because the rates set forth above are caps on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps we adopt here or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic). [FN152] The rate caps are designed to provide a transition toward bill and keep or such other cost recovery mechanism that the Commission may adopt to minimize uneconomic incentives, and no such transition is necessary for carriers already exchanging traffic at rates below the caps. Moreover, those state commissions have concluded that, at least in their states, LECs receive adequate compensation from their own end-users for the transport and termination of ISP-bound traffic and need not rely on intercarrier compensation.

81. Finally, a different rule applies in the case where carriers are not exchanging traffic pursuant to interconnection agreements prior to adoption of this Order (where, for example, a new carrier enters the market or an existing carrier expands into a market it previously had not served). In such a case, as of the effective date of this Order, carriers shall exchange ISP-bound traffic on a bill-and-keep basis during this interim period. We adopt this rule for several reasons. First, our goal here is to address and curtail a pressing problem that has created opportunities for regulatory arbitrage and distorted the operation of competitive markets. In so doing, we seek to confine these market problems to the maximum extent while seeking an \*9189 appropriate long-term resolution in the proceeding initiated by the companion NPRM. Allowing carriers in the interim to expand into new markets using the very intercarrier compensation mechanisms that have led to the existing problems would exacerbate the market problems we seek to ameliorate. For this reason, we believe that a standstill on any expansion of the old compensation regime into new markets is the more appropriate interim answer. [FN153] Second, unlike those carriers that are presently serving ISP customers under existing interconnection agreements, carriers entering new markets to serve ISPs have not acted in reliance on reciprocal compensation revenues and thus have no need of a transition during which to make adjustments to their prior business plans.

82. The interim compensation regime we establish here applies as carriers renegotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic. [FN154] Section 252(i) applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier compensation regime set by this Commission pursuant to section 201. [FN155]

83. This interim regime satisfies the twin goals of compensating LECs for the costs of delivering ISP-

bound traffic while limiting regulatory arbitrage. The interim compensation regime, as a whole, begins a transition toward what we have tentatively concluded, in the companion NPRM, to be a more rational cost recovery mechanism under which LECs recover more of their costs from their own customers. This compensation mechanism is fully consistent \*9190 with the manner in which the Commission has directed incumbent LECs to recover the costs of serving ESPs, including ISPs. [FN156] The three-year transition we adopt here ensures that carriers have sufficient time to re-order their business plans and customer relationships, should they so choose, in light of our tentative conclusions in the companion NPRM that bill and keep is the appropriate long-term intercarrier compensation regime. It also affords the Commission adequate time to consider comprehensive reform of all intercarrier compensation regimes in the NPRM and any resulting rulemaking proceedings. Both the rate caps and the volume limitations reflect our view that LECs should begin to formulate business plans that reflect decreased reliance on revenues from intercarrier compensation, given the trend toward substantially lower rates and the strong possibility that the NPRM may result in the adoption of a full bill and keep regime for ISP-bound traffic.

84. We acknowledge that there is no exact science to setting rate caps to limit carriers' ability to draw revenue from other carriers, rather than from their own end-users. Our adoption of the caps here is based on a number of considerations. First, rates that produce meaningful reductions in intercarrier payments for ISP-bound traffic must be at least as low as rates in existing interconnection agreements. Second, although we make no finding here regarding the actual costs incurred in the delivery of ISP-bound traffic, there is evidence in the record to suggest that technological developments are reducing the costs incurred by carriers in handling all sorts of traffic, including ISP-bound traffic. [FN157] Third, although the process has proceeded too slowly to address the market distortions discussed above, we note that negotiated reciprocal compensation rates continue to decline as ILECs and CLECs negotiate new interconnection agreements. Finally, CLECs have been on notice since the 1999 Declaratory Ruling that it might be unwise to rely on the continued receipt of reciprocal compensation for ISP-bound traffic, thus many have begun the process of weaning themselves from these revenues.

85. The rate caps adopted herein reflect all these considerations. The caps we have selected approximate the downward trend in intercarrier compensation rates reflected in recently negotiated interconnection agreements. In these agreements, carriers have agreed to rates, like those we adopt here, that decline each year of a three-year contract term, and at least one agreement reflects different rates for balanced and unbalanced traffic. [FN158] For example, the initial \*9191 rate cap of \$.0015/mou approximates the rates applicable this year in agreements Level 3 has negotiated with Verizon and SBC. [FN159] The \$.0010/mou rate that applies during most of the three-year interim period reflects a proposal by ALTS, the trade association representing CLECs, for a transition plan pursuant to which intercarrier compensation payments for ISP-bound traffic would decline to \$.0010/mou. [FN160] Similarly, the \$.0007/mou rate reflects the average rate applicable in 2002 under Level 3's agreement with SBC. [FN161] We conclude, therefore, that the rate caps constitute a reasonable transition toward the recovery of costs from end-users.

86. We impose an overall cap on ISP-bound minutes for which compensation is due in order to ensure that growth in dial-up Internet access does not undermine our efforts to limit intercarrier compensation for this traffic and to begin, subject to the conclusion of the NPRM proceedings, a smooth transition toward a bill and keep regime. A ten percent growth cap, for the first two years, seems reasonable in light of CLEC projections that the growth of dial-up Internet minutes will fall in the range of seven to ten percent per year. [FN162] We are unpersuaded by the ILECs' projections that dial-up minutes will grow in the range of forty percent per year, [FN163] but adoption of a cap on growth largely moots this debate. If CLECs have projected growth in the range of ten percent, then limiting intercarrier compensation at that level should not disrupt their customer relationships or their business planning. Nothing in this Order prevents any carrier from serving or indeed expanding service to ISPs, so long as they recover the costs of additional \*9192 minutes from their ISP customers. The caps merely ensure that growth in minutes above the caps is based on a given carrier's

ability to provide efficient and quality service to ISPs, rather than on a carrier's desire to reap an intercarrier compensation windfall.

87. We are not persuaded by arguments proffered by CLECs that requiring them to recover more of their costs from their ISP customers will render it impossible for CLECs profitably to serve ISPs or will lead to higher rates for Internet access. [FN164] First, as noted above, this compensation mechanism is fully consistent with the manner in which this Commission has directed ILECs to recover the costs of serving ISPs. [FN165] Moreover, the evidence in the record does not demonstrate that CLECs cannot compete for ISP customers in the growing number of states that have adopted bill and keep for ISP-bound traffic or that the cost of Internet access has increased in those states. Second, next-generation switching and other technological developments appear to be contributing to a decline in the costs of serving ISPs (and other customers). [FN166] Third, if reciprocal compensation merely enabled CLECs to recover the costs of serving ISPs, CLECs should be indifferent between serving ISPs and other customers. Instead, CLECs have not contradicted ILEC assertions that more than ninety percent of CLEC reciprocal compensation billings are for ISP-bound traffic, [FN167] suggesting that there may be a considerable margin between current reciprocal compensation rates and the actual costs of transport and termination. [FN168] Finally, there is reason to believe that our failure to act, rather than the actions we take here, would lead to higher rates for Internet access, as ILECs seek to recover their reciprocal compensation liability, which they incur on a minute-of-use basis, from their customers who call ISPs. [FN169] Alternatively, ILECs might recover these costs from all of their local customers, including those who do not call ISPs. [FN170] There is no public policy rationale to support a subsidy running from all users of basic telephone service to those end-users who employ dial-up Internet access. [FN171]

\*9193 88. We also are not convinced by the claim of CLECs that limiting intercarrier compensation for ISP-bound traffic will result in a windfall for the incumbent LECs. [FN172] The CLECs argue that the incumbents' local rates are set to recover the costs of originating and terminating calls and that the ILECs avoid termination costs when their end-users call ISP customers served by CLECs. The record does not establish that ILECs necessarily avoid costs when they deliver calls to CLECs, [FN173] and CLECs have not demonstrated that ILEC end-user rates are designed to recover from the originating end-user the costs of delivering calls to ISPs. The ILECs point out that, in response to their complaints about the costs associated with delivering traffic to ISPs, the Commission has directed them to seek permission from state regulators to raise the rates they charge the ISPs, an implicit acknowledgement that ILECs may not recover all of their costs from the originating end-user. [FN174]

### 3. Relationship to Section 251(b)(5)

89. It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, [FN175] while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed. [FN176] Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) [FN177] at the same rate. Thus, if the applicable rate cap is \$.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis \*9194 in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. [FN178] For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. [FN179] This

"mirroring" rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

90. This is the correct policy result because we see no reason to impose different rates for ISP-bound and voice traffic. The record developed in response to the Intercarrier Compensation NPRM and the Public Notice fails to establish any inherent differences between the costs on any one network of delivering a voice call to a local end-user and a data call to an ISP. [FN180] Assuming the two calls have otherwise identical characteristics (e.g., duration and time of day), a LEC generally will incur the same costs when delivering a call to a local end-user as it does delivering a call to an ISP.

[FN181] We therefore are unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms, and conditions for local voice and ISP-bound traffic. [FN182] To the extent that the record indicates that per minute reciprocal \*9195 compensation rate levels and rate structures produce inefficient results, we conclude that the problems lie with this recovery mechanism in general and are not limited to any particular type of traffic.

91. We are not persuaded by commenters' claims that the rates for delivery of ISP-bound traffic and local voice traffic should differ because delivering a data call to an ISP is inherently less costly than delivering a voice call to a local end-user. In an attached declaration to Verizon's comments, William Taylor argues that reciprocal compensation rates may reflect switching costs associated with both originating and terminating functions, despite the fact that ISP traffic generally flows in only one direction. [FN183] If correct, however, this observation suggests a need to develop rates or rate structures for the transport and termination of all traffic that exclude costs associated solely with originating switching. [FN184] Mr. Taylor similarly argues that ISP-bound calls generally are longer in duration than voice calls, and that a per-minute rate structure applied to calls of longer duration will spread the fixed costs of these calls over more minutes, resulting in lower per-minute costs, and possible over recovery of the fixed costs incurred. [FN185] Any possibility of over recovery associated with calls (to ISPs or otherwise) of longer than average duration can be eliminated through adoption of rate structures that provide for recovery of per-call costs on a per-call basis, and minute-of-use costs on a minute-of-use basis. [FN186] We also are not convinced that ISP-bound calls have a lower load distribution (i.e., number and duration of calls in the busy hour as a percent of total traffic), and that these calls therefore impose lower additional costs on a network. [FN187] It is not clear from the record that there is any "basis to speculate that the busy hour for calls to ISPs will be different than the CLEC switch busy hour," [FN188] especially when the busy hour is determined by the flow of both voice and data traffic.

92. Nor does the record demonstrate that CLECs and ILECs incur different costs in delivering traffic that would justify disparate treatment of ISP-bound traffic and local voice traffic under section 251(b)(5). Ameritech maintains that it costs CLECs less to deliver ISP-bound traffic than it costs incumbent LECs to deliver local traffic because CLECs can reduce transmission costs by locating their switches close to ISPs. [FN189] The proximity of the ISP or other \*9196 end-user to the delivering carrier's switch, however, is irrelevant to reciprocal compensation rates. [FN190] The Commission concluded in the Local Competition Order that the non-traffic sensitive cost of the local loop is not an "additional" cost of terminating traffic that a LEC is entitled to recover through reciprocal compensation. [FN191]

93. SBC argues that CLECs should not be entitled to symmetrical reciprocal compensation rates for the delivery of ISP-bound traffic, because CLECs do not provide end office switching functionality to their ISP customers and therefore do not incur the same costs that ILECs incur when delivering local voice traffic. Specifically, SBC claims that the switching functionality that CLECs provide to ISPs is more like a trunk-to-trunk connection than the switching functionality normally provided at end offices. [FN192] SBC also claims that CLECs are able to reduce the costs of delivering ISP-bound traffic by using new, less expensive switches that do not perform the functions necessary for both the origination and delivery of two-way voice traffic. [FN193] Similarly, GTE asserts that new technologies and system architectures make it possible for some CLECs to reduce costs by entirely avoiding circuit-switching on calls "to selected telephone numbers." [FN194] CLECs respond.

however, that they are in fact using the same circuit switching technology used by ILECs to terminate the vast portion of Internet traffic. [FN195] In any event, it is not evident from any of the comments in the record that the apparent efficiencies associated with new system architectures apply exclusively to data traffic, and not to voice traffic as well. ILECs and CLECs alike are free to deploy new technologies that provide more efficient \*9197 solutions to the delivery of certain types of traffic, [FN196] and these more efficient technologies will, over time, be reflected in cost-based reciprocal compensation rates. The overall record in this proceeding does not lead us to conclude that any system architectures or technologies widely used by LECs result in material differences between the cost of delivering ISP-bound traffic and the cost of delivering local voice traffic, and we see no reason, therefore, to distinguish between voice and ISP traffic with respect to intercarrier compensation.

94. Some CLECs take this argument one step further. Whatever the merits of bill and keep or other reforms to intercarrier compensation, they say, any such reform should be undertaken only in the context of a comprehensive review of all intercarrier compensation regimes, including the interstate access charge regime. [FN197] First, we reject the notion that it is inappropriate to remedy some troubling aspects of intercarrier compensation until we are ready to solve all such problems. In the most recent of our access charge reform orders, we recognized that it is "preferable and more reasonable to take several steps in the right direction, even if incomplete, than to remain frozen" pending "a perfect, ultimate solution." [FN198] Moreover, it may make sense to begin reform by rationalizing intercarrier compensation between competing providers of telecommunications services, to encourage efficient entry and the development of robust competition, rather than waiting to complete reform of the interstate access charge regime that applies to incumbent LECs, which was created in a monopoly environment for quite different purposes. Second, the interim compensation scheme we adopt here is fully consistent with the course the Commission has pursued with respect to access charge reform. A primary feature of the CALLS Order is the phased elimination of the PICC and CCL, [FN199] two intercarrier payments we found to be inefficient, in favor of greater recovery from end-users through an increased SLC, an end-user charge. [FN200] Finally, like the CALLS Order, the interim regime we adopt here "provides relative certainty in the marketplace" pending further Commission action, thereby allowing carriers to develop business plans, attract capital, and make intelligent investments. [FN201]

#### \*9198 D. Conclusion

95. In this Order, we strive to balance the need to rationalize an intercarrier compensation scheme that has hindered the development of efficient competition in the local exchange and exchange access markets with the need to provide a fair and reasonable transition for CLECs that have come to depend on intercarrier compensation revenues. We believe that the interim compensation regime we adopt herein responds to both concerns. The regime should reduce carriers' reliance on carrier-to-carrier payments as they recover more of their costs from end-users, while avoiding a "flash cut" to bill and keep which might upset legitimate business expectations. The interim regime also provides certainty to the industry during the time that the Commission considers broader reform of intercarrier compensation mechanisms in the NPRM proceeding. Finally, we hope this Order brings an end to the legal confusion resulting from the Commission's historical treatment of ISP-bound traffic, for purposes of jurisdiction and compensation, and the statutory obligations and classifications adopted by Congress in 1996 to promote the development of competition for all telecommunications services. We believe the analysis set forth above amply responds to the court's mandate that we explain how our conclusions regarding ISP-bound traffic fit within the governing statute. [FN202]

## V. PROCEDURAL MATTERS

### A. Final Regulatory Flexibility Analysis

96. As required by the Regulatory Flexibility Act (RFA), [FN203] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Declaratory Ruling and NPRM. [FN204] The Commission sought and received written comments on the IRFA. The Final Regulatory Flexibility Analysis (FRFA) in this Order on Remand and Report and Order conforms to the RFA, as amended. [FN205] To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules, or statements made in preceding sections of this Order on Remand and Report and Order, the rules and statements set forth in those preceding sections shall be controlling.

#### 1. Need for, and Objectives of, this Order on Remand and Report and Order

97. In the Declaratory Ruling, we found that we did not have an adequate record upon which to adopt a rule regarding intercarrier compensation for ISP-bound traffic, but we indicated that adoption of a rule would serve the public interest. [FN206] We sought comment on two alternative \*9199 proposals, and stated that we might issue new rules or alter existing rules in light of the comments received. [FN207] Prior to the release of a decision, the Court of Appeals for the District of Columbia Circuit vacated certain provisions of the Declaratory Ruling and remanded the matter to the Commission. [FN208]

98. This Order on Remand and Report and Order addresses the concerns of various parties to this proceeding and responds to the court's remand. The Commission exercises jurisdiction over ISP-bound traffic pursuant to section 201, and establishes a three-year interim intercarrier compensation mechanism for the exchange of ISP-bound traffic that applies if incumbent LECs offer to exchange section 251(b)(5) traffic at the same rates. During this interim period, intercarrier compensation for ISP-bound traffic is subject to a rate cap that declines over the three-year period, from \$.0015/mou to \$.0007/mou. The Commission also imposes a cap on the total ISP-bound minutes for which a LEC may receive this compensation under a particular interconnection agreement equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to receive compensation during the first quarter of 2001, increased by ten percent in each of the first two years of the transition. If an incumbent LEC does not offer to exchange all section 251(b)(5) traffic subject to the rate caps set forth herein, the exchange of ISP-bound traffic will be governed by the reciprocal compensation rates approved or arbitrated by state commissions.

#### 2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

99. The Office of Advocacy, U.S. Small Business Administration (Office of Advocacy) submitted two filings in response to the IRFA. [FN209] In these filings, the Office of Advocacy raises significant issues regarding our description, in the IRFA, of small entities to which our rules will apply, and the discussion of significant alternatives considered and rejected. Specifically, the Office of Advocacy argues that the Commission has failed accurately to identify all small entities affected by the rulemaking by refusing to characterize small incumbent local exchange carriers (LECs), and failing to identify small ISPs, as small entities. [FN210] We note that, in the IRFA, we stated that we excluded small incumbent LECs from the definitions of "small entity" and "small business concern" because such companies are either dominant in their field of operations or are not independently owned and operated. [FN211] We also stated, however, that we would nonetheless, out of an abundance of caution, include small incumbent LECs in the \*9200 IRFA, and did so. [FN212] Small incumbent LECs and other relevant small entities are included in our present analysis as described below.

100. The Office of Advocacy also states that Internet service providers (ISPs) are directly affected by our actions, and therefore should be included in our regulatory flexibility analysis. We find, however, that rates charged to ISPs are only indirectly affected by our actions. We have, nonetheless, briefly discussed the effect on ISPs in the primary text of this Order. [FN213]

101. Last, the Office of Advocacy also argues that the Commission has failed to adequately address significant alternatives that accomplish our stated objective and minimize any significant economic impact on small entities. [FN214] We note that, in the IRFA, we described the nature and effect of our proposed actions, and encouraged small entities to comment (including giving comment on possible alternatives). We also specifically sought comment on the two alternative proposals for implementing intercarrier compensation - one that resolved intercarrier compensation pursuant to the negotiation and arbitration process set forth in Section 252, and another that would have had us adopt a set of federal rules to govern such intercarrier compensation. [FN215] We believe, therefore, that small entities had a sufficient opportunity to comment on alternative proposals.

102. NTCA also filed comments, not directly in response to the IRFA, urging the Commission to fulfill its obligation to consider small telephone companies. [FN216] Some commenters also raised the issue of small entity concerns over increasing Internet traffic and the use of Extended Area Service (EAS) arrangements. [FN217] We are especially sensitive to the needs of rural and small LECs that handle ISP-bound traffic, but we find that the costs that LECs incur in originating this traffic extends beyond the scope of the present proceeding and should not dictate the appropriate approach to compensation for delivery of ISP-bound traffic.

### 3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

103. The rules we are adopting apply to local exchange carriers. To estimate the number of small entities that would be affected by this economic impact, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." [FN218] In addition, the term "small business" has the same meaning as the \*9201 term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. [FN219] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. [FN220] The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. [FN221]

104. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS). [FN222] According to data in the most recent report, there are 4,144 interstate carriers. [FN223] These carriers include, inter alia, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

105. We have included small incumbent local exchange carriers (LECs) in this regulatory flexibility analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." [FN224] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. [FN225] We have therefore included small incumbent LECs in this regulatory flexibility analysis, although we emphasize that this action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

\*9202 106. Total Number of Telephone Companies Affected. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. [FN226] This number contains a variety

of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." [FN227] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rule changes adopted in this proceeding.

107. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. [FN228] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. [FN229] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rule changes adopted in this proceeding.

108. Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers. Neither the Commission nor the SBA has developed a definition particular to small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. [FN230] According to our most recent TRS data, there are 1,348 incumbent LECs and 212 CAPs and competitive LECs. [FN231] Although it seems certain that some \*9203 of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs and fewer than 212 CAPs and competitive LECs that may be affected by the decisions and rule changes adopted in this proceeding.

#### 4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

109. The rule we are adopting imposes direct compliance requirements on interconnected incumbent and competitive LECs, including small LECs. In order to comply with this rule, these entities will be required to exchange their ISP-bound traffic subject to the rules we are adopting above.

#### 5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

110. In the Declaratory Ruling and Intercarrier Compensation NPRM the Commission proposed various approaches to intercarrier compensation for ISP-bound traffic. [FN232] During the course of this proceeding the Commission considered and rejected several alternatives. [FN233] None of the significant alternatives considered would appear to succeed as much as our present rule in balancing our desire to minimize any significant economic impact on relevant small entities, with our desire to deal with the undesirable incentives created under the current reciprocal compensation regime that

governs the exchange of ISP-bound traffic in most instances. We also find that for small ILECs and CLECs the administrative burdens and transaction costs of intercarrier compensation will be minimized to the extent that LECs begin a transition toward recovery of costs from end-users, rather than other carriers.

111. Although a longer transition period was considered by the Commission, it was rejected because a three-year period was considered sufficient to accomplish our policy objectives with respect to all LECs. [FN234] Differing compliance requirements for small LECs or exemption from all or part of this rule is inconsistent with our policy goal of addressing the market distortions attributable to the prevailing intercarrier compensation mechanism for ISP-bound traffic and beginning a smooth transition to bill-and-keep.

Report to Congress: The Commission will send a copy of this Order on Remand and Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. [FN235] In addition, the Commission will send a copy of this Order on Remand and Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order on Remand and Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register. [FN236]

## VI. ORDERING CLAUSES

112. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 251, 252, 332, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 251, 252, 332, and 403, and Section 553 of Title 5, United States Code, 5 U.S.C. § 553, that this Order on Remand and Report and Order and revisions to Part 51 of the Commission's rules, 47 C.F.R. Part 51, ARE ADOPTED. This Order on Remand and Report and Order and the rule revisions adopted herein will be effective 30 days after publication in the Federal Register except that, for good cause shown, as set forth in paragraph 82 of this Order, the provision of this Order prohibiting carriers from invoking section 252(i) of the Act to opt into an existing interconnection agreement as it applies to rates paid for the exchange of ISP-bound traffic will be effective immediately upon publication of this Order in the Federal Register.

113. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order on Remand and Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

## FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

FN1. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 (1999) (Declaratory Ruling or Intercarrier Compensation NPRM).

FN2. See 47 U.S.C. § 201, Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). Hereinafter, all citations to the Act and to the 1996 Act will be to the relevant section of the United States Code unless otherwise noted.

FN3. 47 U.S.C. § 251(b)(5).

FN4. See Bell Atl. Tel. Cos. v. FCC, 206 F.3d 1 (D.C. Cir. 2000) (Bell Atlantic).

FN5. Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. April 27, 2001) ("Unified Intercarrier Compensation NPRM" or "NPRM").

FN6. "Bill and keep" refers to an arrangement in which neither of two interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end-users the cost of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16045 (1996) (Local Competition Order), aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997) (CompTel), aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997) (Iowa Utils. Bd.), aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996); Second Order on Reconsideration, 11 FCC Rcd 19738 (1996); Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997); further recon. pending. Bill and keep does not, however, preclude intercarrier charges for transport of traffic between carriers' networks. Id.

FN7. 47 U.S.C. § 251(g).

FN8. Access Charge Reform, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 15998-99 (1997) (Access Charge Reform Order), aff'd, Southwestern Bell Telephone Co. v. FCC, 153 F.3d 523 (8th Cir. 1998).

FN9. See, e.g., Letter from Robert T. Blau, BellSouth, to Magalie Roman Salas, Secretary, FCC (November 6, 2000); see also Verizon Remand Comments at 2 (Verizon will be billed more than one billion dollars in 2000 for Internet-bound calls); Letter from Richard J. Metzger, Focal, to Deena Shetler, Legal Advisor to Commissioner Gloria Tristani, FCC (Jan. 11, 2001)(ILECs owed \$1.98 billion in reciprocal compensation to CLECs in 2000). On June 23, 2000, the Commission released a Public Notice seeking comment on the issues raised by the court's remand. See Comment Sought on Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit, CC Docket Nos. 96-98, 99-68, Public Notice, 15 FCC Rcd 11311 (2000) (Public Notice). Comments and reply comments filed in response to the Public Notice are identified herein as "Remand Comments" and "Remand Reply Comments," respectively. Comments and replies filed in response to the 1999 Intercarrier Compensation NPRM are identified as "Comments" and "Reply Comments," respectively.

FN10. See, e.g., Verizon Remand Comments at 11, 21.

FN11. See Bell Atlantic, 206 F.3d 1.

FN12. Declaratory Ruling, 14 FCC Rcd at 3691.

FN13. Declaratory Ruling, 14 FCC Rcd at 3691.

FN14. Declaratory Ruling, 14 FCC Rcd at 3691.

FN15. Declaratory Ruling, 14 FCC Rcd at 3691 (citing Federal-State Joint Board on Universal

Service, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11531 (1998) (Universal Service Report to Congress)).

FN16. The Commission defines "enhanced services" as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 C.F.R. § 64.702(a). The 1996 Act describes these services as "information services." See 47 U.S.C. § 153(20) ("information service" refers to the "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."). See also Universal Service Report to Congress, 13 FCC Rcd at 11516 (the "1996 Act's definitions of telecommunications service and information service essentially correspond to the pre-existing categories of basic and enhanced services").

FN17. MTS and WATS Market Structure, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983)(MTS/WATS Market Structure Order) (ESPs are "[a]mong the variety of users of access service" and "obtain[] local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit [their] location and, commonly, another location.").

FN18. This policy is known as the "ESP exemption." See MTS/WATS Market Structure Order, 97 FCC 2d at 715 (ESPs have been paying local business service rates for their interstate access and would experience rate shock that could affect their viability if full access charges were instead applied); see also Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2633 (1988) (ESP Exemption Order) ("the imposition of access charges at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired"); Access Charge Reform Order, 12 FCC Rcd at 16133 ("[m]aintaining the existing pricing structure ... avoids disrupting the still-evolving information services industry").

FN19. ESP Exemption Order, 3 FCC Rcd at 2635 n.8, 2637 n.53. See also Access Charge Reform Order, 12 FCC Rcd at 16133-35.

FN20. 47 U.S.C. §§ 251-252.

FN21. 47 U.S.C. § 251(b)(5).

FN22. See Local Competition Order, 11 FCC Rcd at 16013 ("With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered 'local areas' for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs."); see also 47 C.F.R. § 51.701(b)(1-2). For CMRS traffic, the Commission determined that reciprocal compensation applies to traffic that originates and terminates within the same Major Trading Area (MTA). See 47 C.F.R. § 51.701(b)(2).

FN23. See, e.g., Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 61 Fed. Reg. 53922 (1996); Petition for Partial Reconsideration and Clarification of MFS Communications Co., Inc. at 28; Letter from Richard J. Metzger, ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC (June 20, 1997); Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation

for Information Service Provider Traffic, CCB/CPD 97-30, DA 97- 1399 (rel. July 2, 1997); Letter from Edward D. Young and Thomas J. Tauke, Bell Atlantic, to William E. Kennard, Chairman, FCC (July 1, 1998). The Commission later directed parties wishing to make ex parte presentations regarding the applicability of reciprocal compensation to ISP-bound traffic to make such filings in CC Docket No. 96-98, the local competition proceeding. See Ex Parte Procedures Regarding Requests for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CC Docket No. 96-98, Public Notice, 13 FCC Rcd. 15568 (1998).

FN24. Declaratory Ruling, 14 FCC Rcd at 3693-94.

FN25. Declaratory Ruling, 14 FCC Rcd at 3694.

FN26. Declaratory Ruling, 14 FCC Rcd at 3695.

FN27. Declaratory Ruling, 14 FCC Rcd at 3695-3701; see also Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, Memorandum Opinion and Order, 7 FCC Rcd 1619 (1992) (BellSouth MemoryCall), aff'd, Georgia Pub. Serv. Comm'n v. FCC, 5 F.3d 1499 (11th Cir. 1993)(table); Teleconnect Co. v. Bell Telephone Co. of Penn., E-88-83, 10 FCC Rcd 1626 (1995) (Teleconnect), aff'd sub nom. Southwestern Bell Tel. Co. v. FCC, 116 F.3d 593 (D.C. Cir. 1997).

FN28. Declaratory Ruling, 14 FCC Rcd at 3695-97.

FN29. Declaratory Ruling, 14 FCC Rcd at 3697.

FN30. Declaratory Ruling, 14 FCC Rcd at 3690, 3695-3703.

FN31. Declaratory Ruling, 14 FCC Rcd at 3703.

FN32. Declaratory Ruling, 14 FCC Rcd at 3703.

FN33. Declaratory Ruling, 14 FCC Rcd at 3706.

FN34. Declaratory Ruling, 14 FCC Rcd at 3703-06. The Commission did recognize, however, that its conclusion that ISP-bound traffic is largely interstate might cause some state commissions to re-examine their conclusions that reciprocal compensation is due to the extent that those conclusions were based on a finding that this traffic terminates at the ISP's server. Id. at 3706.

FN35. Declaratory Ruling, 14 FCC Rcd at 3707-09.

FN36. See Bell Atlantic, 206 F.3d 1.

FN37. Bell Atlantic, 206 F.3d at 5.

FN38. Bell Atlantic, 206 F.3d at 5; see also id. at 8 (the Commission had not "supplied a real explanation for its decision to treat end-to-end analysis as controlling" with respect to the application of section 251(b)(5)).

FN39. See Bell Atlantic, 206 F.3d at 6-7.

FN40. See Bell Atlantic, 206 F.3d at 6-7.

FN41. Bell Atlantic, 206 F.3d at 8.

FN42. Bell Atlantic, 206 F.3d at 8-9; 47 U.S.C. § 153(47) (defining "telephone exchange service").

FN43. Public Notice, 15 FCC Rcd 11311.

FN44. Id.; see also 47 U.S.C. § 251(g); 47 U.S.C. § 153(20).

FN45. See Digital Economy 2000, U.S. Department of Commerce (June 2000) ("Three hundred million people now use the Internet, compared to three million in 1994.")

FN46. 47 U.S.C. § 251(b)(5).

FN47. Local Competition Order, 11 FCC Rcd at 16012.

FN48. Bell Atlantic, 206 F.3d at 5.

FN49. Id.

FN50. Id.

FN51. Id. at 8.

FN52. Id. at 8-9.

FN53. Id.

FN54. Significantly, however, the compensation mechanism effected for this predominantly interstate access traffic is the result of a federal mandate, which requires states to treat ISP-bound traffic for compensation purposes in a manner similar to local traffic if ISPs so request. See *infra* note 105.

FN55. Access Charge Reform Order, 12 FCC Rcd at 16134 ("Internet access does generate different usage patterns and longer call holding times than average voice usage.").

FN56. Some critics of the Commission's order may contend that we rely here on the same reasoning that the court rejected in Bell Atlantic. We acknowledge that there is a superficial resemblance between the Commission's previous order and this one: Here, as before, the Commission finds that ISP-bound traffic falls outside the scope of section 251(b)(5)'s reciprocal compensation requirement and within the Commission's access charge jurisdiction under section 201(b). The rationale underlying the two orders, however, differs substantially. Here the Commission bases its conclusion that ISP-bound traffic falls outside section 251(b)(5) on its construction of sections 251(g) and (i) -- not, as in the previous order, on the theory that section 251(b)(5) applies only to "local" telecommunications traffic and that ISP-bound traffic is interstate. Furthermore, to the extent the Commission continues to characterize ISP-bound traffic as interstate for purposes of its section 201 authority, it has sought in this Order to address in detail the Bell Atlantic court's concerns.

FN57. 47 U.S.C. § 251(b)(5).

FN58. 47 U.S.C. § 153(43).

FN59. 47 U.S.C. § 251(g) (emphasis added).

FN60. See *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 397 (1999) ("It would be a gross understatement to say that the Telecommunications Act of 1996 is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction.... But Congress is well aware that the ambiguities it chooses to produce in a statute will be resolved by the implementing agency.... We can only enforce the clear limits that the 1996 Act contains.").

FN61. In the Declaratory Ruling, the Commission did not explain the relevance of section 251(g) nor discuss the categories of traffic exempted from reciprocal compensation by that provision, at least until the Commission should act otherwise. Reflecting this omission in the underlying order, the Bell Atlantic court does not mention the relationship of sections 251(g) and 251(b)(5), nor the enumerated categories of services referenced by subsection (g). Rather, the court focuses its review on the possible categorization of ISP-bound traffic as "local," terminology we now find inappropriate in light of the more express statutory language set forth in section 251(g).

FN62. *Bell Atlantic*, 206 F.3d at 6; see also *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 377-87.

FN63. Authority over rates (or "receipt of compensation") is a core feature of "equal access and nondiscriminatory interconnection" obligations. Indeed, one of the Commission's primary goals when designing an access charge regime was to ensure that access users were treated in a nondiscriminatory manner when interconnecting with LEC networks in order to transport interstate communications. See *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 737 F.2d 1095, 1101-1108, 1130-34 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985) (*NARUC v. FCC*).

FN64. This view is consistent with previous Commission orders construing section 251(g). The Commission recognized in the Advanced Services Remand Order, for example, that section 251(g) preserves the requirements of the AT&T Consent Decree (see *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) (hereinafter AT&T Consent Decree or Modification of Final Judgment ("MFJ")), but that order does not conclude that section 251(g) preserves only MFJ requirements. Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 et al., Order on Remand, 15 FCC Rcd 385, 407 (1999) (Advanced Services Remand Order). Indeed, the ultimate issue addressed in that part of the order was not the status or scope of section 251(g) as a carve-out provision at all, but rather the question -- irrelevant for our purposes here -- whether "information access" is a category of service that is mutually exclusive of "exchange access," as the latter term is defined in section 3(16) of the Act. See *id.* at 407-08; see also *infra* para. 42 & note 76. By contrast, when the Commission first addressed the scope of the reciprocal compensation obligations of section 251(b)(5) in the Local Competition Order, it expressly cited section 251(g) in support of the decision to exempt from those obligations the tariffed interstate access services provided by all LECs (not just Bell companies subject to the MFJ) to interexchange carriers. 11 FCC Rcd at 16013. The Bell Atlantic court did not take issue with the Commission's earlier conclusion that section 251(b)(5) is so limited. 206 F.3d at 4. The interpretation we adopt here -- that section 251(g) exempts from section 251(b)(5) information access services provided to information service providers, as well as access provided to IXCs - thus is fully consistent with the Commission's initial construction of section 251(g), in the Local Competition Order, as extending beyond the MFJ to our own access rules and policies.

FN65. The term "exchange service" as used in section 251(g) is not defined in the Act or in the MFJ. Rather, the term "exchange service" is used in the MFJ as part of the definition of the term "exchange access," which the MFJ defines as "the provision of exchange services for the purpose of originating or terminating interexchange telecommunications." *United States v. AT&T*, 552 F. Supp. at 228. Thus, the term "exchange service" appears to mean, in context, the provision of services in connection

with interexchange communications. Consistent with that, in section 251(g), the term is used as part of the longer phrase "exchange services for such [exchange] access to interexchange carriers and information service providers." The phrasing in section 251(g) thus parallels the MFJ. All of this indicates that the term "exchange service" is closely related to the provision of exchange access and information access.

FN66. Although section 251(g) does not itself compel this outcome with respect to intrastate access regimes (because it expressly preserves only the Commission's traditional policies and authority over interstate access services), it nevertheless highlights an ambiguity in the scope of "telecommunications" subject to section 251(b)(5) -- demonstrating that the term must be construed in light of other provisions in the statute. In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms." Local Competition Order, 11 FCC Rcd at 15869.

FN67. CompTel, 117 F.3d at 1073 (emphasis added). The court continued that the Commission would be free under section 201 to alter its traditional regulatory treatment of interstate access service in the future, but that the standards set out in sections 251 and 252 would not be controlling. *Id.*

FN68. CompTel, 117 F.3d at 1072 (emphasis added).

FN69. For further discussion of the jurisdictionally interstate nature of ISP-bound traffic, see *infra* paras. 55-64. See also NARUC v. FCC, 737 F.2d at 1136 (determining that traffic to ESPs may properly constitute interstate access traffic); Access Billing Requirements for Joint Service Provision, CC Docket 87-579, Memorandum Opinion and Order, 4 FCC Rcd 7183 (1989).

FN70. The Commission has historically dictated the pricing policies applicable to services provided by LECs to information service providers, although those policies differ from those applicable to LEC provision of access services to IXCs. Prior to the 1996 Act, it was the Commission that determined that ESPs either may purchase their interstate access services from interstate tariffs or (at their discretion) pay a combination of local business line rates, the federal subscriber line charges associated with those business lines, and, where appropriate, the federal special access surcharge. See note 105, *infra*. We conclude that section 251(g) preserves our ability to continue to dictate the pricing policies applicable to this category of traffic. We do not believe, moreover, that section 251(g) extends only to those specific carriers providing service on February 7, 1996. At the very least, subsection (g) is ambiguous on this point. On the one hand, the first sentence of this provision states that its terms apply to "each local exchange carrier, to the extent that it provides wireline services," without regard to whether it may be a BOC or a competitive LEC. 47 U.S.C. § 251(g). On the other hand, that same sentence refers to restrictions and obligations applicable to "such carrier" prior to February 8, 1996. *Id.* We believe that the most reasonable interpretation of that sentence, in this context, is that subsection (g) was intended to preserve pre-existing regulatory treatment for the enumerated categories of carriers, rather than requiring disparate treatment depending upon whether the LEC involved came into existence before or after February 1996.

FN71. See United States v. AT&T, 552 F. Supp. at 229; Advanced Services Remand Order, 15 FCC Rcd at 406-08.

FN72. See Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1997), petition for review pending, Ass'n of Communications Enterprises v. FCC, D.C. Circuit No. 00-1144. In effect, we have

provided for concurrent authority under that provision and section 201 by permitting a party to purchase the same service under filed tariffs or to proceed under interconnection arrangements to secure resale services.

FN73. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3775 (1999). See also Advanced Services Remand Order, 15 FCC Rcd at 385, 386. We emphasize that these two examples are illustrative and may not be the only instances where the Commission chooses to supersede pre-Act requirements for interstate access services.

FN74. See *infra* paras. 67-71.

FN75. See, e.g., SEC v. Chenery Corp., 318 U.S. 80, 88 (1943).

FN76. See *Worldcom, Inc. v. FCC*, No. 00-1022 et al. (D.C. Cir.). In that proceeding, the Commission has argued that the category previously labeled "information access" under the MFJ is a subset of those services now falling under the category "exchange access" as set forth in section 3(16) of the Act, 47 U.S.C. 153(16), while incumbent LECs and others have argued that the two categories are mutually exclusive. We need not reargue here whether "information access" is a subset of "exchange access" or whether instead they are mutually exclusive categories. The only issue relevant to our section 251(g) inquiry in this case is whether ISP-bound traffic falls, at a minimum, within the legacy category of "information access." Both the Commission and incumbent LECs have agreed that the access provided to ISPs satisfies the definition of information access.

FN77. Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Session at 123 (February 1, 1996).

FN78. United States v. AT&T, 552 F. Supp. at 196, 229.

FN79. See Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 9 (Dec. 14, 2000)(stating that section 251(g) applies by its very terms to "information access").

FN80. United States v. AT&T, 552 F. Supp. at 196, 229.

FN81. This finding is consistent with our past statements on the issue. In the Non-Accounting Safeguards Order, we found that the access that LECs provide to enhanced service providers, including ISPs, constitutes "information access" as the MFJ defines that term. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22024 & n.621 (1996). Although we subsequently overruled our statement in that order that ISPs do not also purchase "exchange access" under section 3(16), we have not altered our finding that the access provided to enhanced service providers (including ISPs) is "information access." Advanced Services Remand Order, 15 FCC Rcd at 404-05.

FN82. See, e.g., Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 9 (Dec. 14, 2000). Some have argued that "information access" includes only certain specialized functions unique to the needs of enhanced service providers and does not include basic telecommunications links used to provide enhanced service providers with access to the LEC network. See, e.g., Brief of WorldCom, Inc., D.C. Circuit No. 00-1002, et al., filed Oct. 3, 2000, at 16 n.12. The MFJ definition of information access, however, includes the telecommunications links used

for the "origination, termination, [and] transmission" of information services, and "where necessary, the provision of network signalling" and other functions. United States v. AT&T, 552 F. Supp. at 229 (emphasis added). Others have argued that the "information access" definition engrafts a geographic limitation that renders this service category a subset of telephone exchange service. See Letter from Richard Rindler, Swindler, Berlin, to Magalie Roman Salas, Secretary, FCC, at 3 (Apr. 12, 2001). We reject that strained interpretation. Although it is true that "information access" is necessarily initiated "in an exchange area," the MFJ definition states that the service is provided "in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services" United States v. AT&T, 552 F. Supp. at 229 (emphasis added). Significantly, the definition does not further require that the transmission, once handed over to the information service provider, terminate within the same exchange area in which the information service provider first received the access traffic.

FN83. Bell Atlantic, 206 F.3d at 5.

FN84. Declaratory Ruling, 14 FCC Rcd at 3695 (emphasis added).

FN85. This is the compensation mechanism chosen by the ISPs. See note 105, *infra*.

FN86. Local Competition Order, 11 FCC Rcd at 1033-34.

FN87. 47 U.S.C. § 332; Local Competition Order, 11 FCC Rcd at 16005-06.

FN88. Local Competition Order, 11 FCC Rcd at 16005-06; see also Iowa Utils. Bd. v. FCC, 120 F.3d at 800 n. 21 (finding that the Commission had jurisdiction under section 332 to issue rules regarding LEC-CMRS interconnection, including reciprocal compensation rules).

FN89. We seek comment on these issues in the NPRM.

FN90. Local Competition Order, 11 FCC Rcd at 16005.

FN91. *Id.* at 16016.

FN92. *Id.* at 16016-17.

FN93. *Id.* at 16017.

FN94. 47 U.S.C. § 251(i).

FN95. See also Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 8 (Dec. 14, 2000).

FN96. For example, section 251 has expanded upon our historic functions by providing us with the authority to set the framework for pricing rules applicable to unbundled network elements, purchased under interconnection agreements.

FN97. Southwestern Bell Tel. Co. v. FCC, 153 F.3d 523, 543 (8th Cir. 1998) (affirming the jurisdictionally mixed nature of ISP-bound traffic).

FN98. *Id.*

FN99. See, e.g., Louisiana PSC v. FCC, 476 U.S. 355, 375 n.4.

FN100. See Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC (Dec. 8, 2000)(attaching A Legal Roadmap for Implementing a Bill and Keep Rule for All Wireline Traffic, at 10-11)(Qwest Roadmap).

FN101. Bell Atlantic, 206 F.3d at 5; see Qwest Roadmap at 4.

FN102. The D.C. Circuit itself has long recognized that ESPs use interstate access. See, e.g., NARUC v. FCC, 737 F.2d at 1136.

FN103. Bell Atlantic, 206 F.3d at 8.

FN104. Bell Atlantic, 206 F.3d at 7.

FN105. As noted, the Commission has permitted ESPs to pay local business line rates from intrastate tariffs for ILEC-provided access service, in lieu of interstate carrier access charges. See, e.g., MTS/WATS Market Structure Order, 97 FCC 2d at 715; ESP Exemption Order, 3 FCC Rcd at 2635 n.8, 2637 n.53. ESPs also pay the federal subscriber lines charges associated with those business lines and, where appropriate, the federal special access surcharge. The subscriber line charge (SLC) recovers a portion of the cost of a subscriber's line that is allocated, pursuant to jurisdictional separations, to the interstate jurisdiction. See 47 C.F.R. § 69.152 (defining SLC); 47 C.F.R. Part 36 (jurisdictional separations). The special access surcharge recovers for use of the local exchange when private line/PBX owners "circumvent the conventional long-distance network and yet achieve interstate connections beyond those envisioned by the private line service." NARUC v. FCC, 737 F.2d at 1138. See 47 C.F.R. § 69.115.

FN106. With judicial approval, the Commission initially adopted this access service pricing policy in order to avoid rate shock to a fledgling enhanced services industry. NARUC v. FCC, 737 F.2d at 1136-37. In the decision affirming this pricing policy, the court expressly recognized that ESPs use interstate access service. Id. at 1136 (enhanced service providers "may, at times, heavily use exchange access"). The Commission recently decided to retain this policy, largely because it found that it made little sense to mandate, for the first time, the application of existing non-cost-based interstate access rates to enhanced services just as the Commission was reforming the access charge regime to eliminate implicit subsidies and to move such charges toward competitive levels. Access Charge Reform Order, 12 FCC Rcd at 16133, aff'd, Southwestern Bell Telephone Co., 153 F.3d at 541-42.

FN107. See, e.g., MTS/WATS Market Structure Order, 97 FCC 2d at 711-12, 722; Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Memorandum Opinion and Order, 4 FCC Rd 1, 141 (1988), aff'd, California v. FCC, 4 F.3d 1505 (9th Cir. 1993) (ONA Plans Order); GTE Telephone Operating Cos., CC Docket No. 98-79, Memorandum Opinion and Order, 13 FCC Rcd 22466 (1998).

FN108. Bell Atlantic, 206 F.3d at 3.

FN109. Id. at 5.

FN110. See, e.g., id. at 6, 7 (accepting, arguendo, that ISP-bound traffic is like IXC-bound traffic for jurisdictional purposes).

FN111. See, e.g., BellSouth MemoryCall, 7 FCC Rcd at 1620 (voicemail is interstate because "there

is a continuous path of communications across state line between the caller and the voice mail service"); ONA Plans Order, 4 FCC Rcd at 141 (an enhanced service is subject to FCC authority if it is interstate, "that is, when it involves communications or transmissions between points in different states on an end-to-end basis").

FN112. ONA Plans Order, 4 FCC Rcd at 141; see also *id.*, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084, 3088-89 (1990), *aff'd*, California v. FCC, 4 F.3d 1505 (9th Cir. 1993)(rejecting claim that basic service elements, consisting of features and functions provided by telephone company's local switch for benefit of enhanced service providers and others, are separate intrastate offerings even when used in connection with end-to-end transmissions).

FN113. See, e.g., MTS/WATS Market Structure Order, 97 FCC 2d at 711 ("[a]mong the variety of users of access service are ... enhanced service providers"); Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Notice of Proposed Rulemaking, 2 FCC Rcd 4305, 4305, 4306 (1987) (noting that enhanced service providers use "exchange access service"); ESP Exemption Order, 3 FCC Rcd at 2631 (referring to "certain classes of exchange access users, including enhanced service providers").

FN114. See, e.g., Access Charge Reform Order, 12 FCC Rcd at 16131-32; GTE Telephone Operating Cos., 13 FCC Rcd at 22478. Cf. Bell Atlantic, 206 F.3d at 4, 6-7.

FN115. Of course, the Internet provides applications other than the World Wide Web, such as e-mail, games, chat sites, or streaming media, which have different technical characteristics but all of which involve computers in multiple locations, often across state and national boundaries.

FN116. See Qwest Roadmap at 4-5, 9-10.

FN117. See, e.g., Verizon Remand Reply at 9 (Internet traffic is indistinguishable from Feature Group A access service).

FN118. See Local Competition Order, 11 FCC Rcd at 15935 n. 2091 (describing "Feature Group A" access service); see also MCI Telecomm. Corp. v. FCC, 566 F.2d 365, 367 n.3 (D.C. Cir. 1977), cert. denied, 434 U.S. 1040 (1978).

FN119. BellSouth MemoryCall, 7 FCC Rcd at 1619.

FN120. *Id.* at 1620.

FN121. *Id.* at 1621.

FN122. It is important to note that a dial-up call to an ISP will not even be required when broadband services arrive. Those connections will be always on and there will be no phone call in any traditional sense. Indeed, the only initiating event will be the end-user interacting with other Internet content or users. Thus, increasingly, notions of two calls become meaningless.

FN123. Bell Atlantic, 206 F.3d at 8 (citing FCC Brief at 76, Southwestern Bell v. FCC, 153 F.3d 523).

FN124. Access Charge Reform Order, 12 FCC Rcd at 16133-34.

FN125. See FCC Brief at 75-76, Southwestern Bell v. FCC, 153 F.3d 523.

FN126. Southwestern Bell v. FCC, 153 F.3d at 534.

FN127. In the Declaratory Ruling, we stated that, pending adoption of a federal rule governing intercarrier compensation for ISP-bound traffic, state commissions would determine whether reciprocal compensation was due for such traffic. Declaratory Ruling, 14 FCC Rcd at 3706. Since that time, most, though not all, states have ordered the payment of reciprocal compensation for ISP-bound traffic.

FN128. 47 C.F.R. § 51.703(a).

FN129. Recovery from other carriers is premised on the economic assumption that the carrier whose customer originates the call has "caused" the transport and termination costs associated with that call, and the originating carrier should, therefore, reimburse the interconnecting carrier for "transport and termination." The companion NPRM evaluates the validity of that assumption and tentatively concludes that it is an incorrect premise.

FN130. Cf. Local Competition Order, 11 FCC Rcd at 16043 (symmetrical termination payments to paging providers based on ILECs' costs "might create uneconomic incentives for paging providers to generate traffic simply in order to receive termination compensation").

FN131. 47 C.F.R. § 51.705 (an incumbent LEC's rates for transport and termination shall be established on the basis of the forward-looking economic costs of such offerings); 47 C.F.R. § 51.711 (subject to certain exceptions, rates for transport and termination shall be symmetrical and equal to those that the incumbent LEC assesses upon other carriers for the same services).

FN132. Letter from Robert T. Blau, BellSouth, to Magalie Roman Salas, Secretary, FCC (November 6, 2000); see also Verizon Remand Comments at 2 (Verizon will be billed more than one billion dollars in 2000 for Internet-bound calls); Letter from Richard J. Metzger, Focal, to Deena Shetler, Legal Advisor to Commissioner Gloria Tristani, FCC (Jan. 11, 2001)(ILECs owed \$1.98 billion in reciprocal compensation to CLECs in 2000).

FN133. Verizon Remand Comments at 11, 21. Verizon also cites extreme cases of CLECs that terminate in excess of eight thousand times more traffic than they originate. *Id.* at 21. See also Letter from Robert T. Blau, BellSouth; Melissa Newman, Qwest; Priscilla Hill-Ardoin, SBC; and Susanne Guyer, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Nov. 9, 2000).

FN134. See, e.g., Verizon Remand Comments at 15 (citing case of CLEC offer of free long distance service to dial-up Internet customers, an offer it did not extend to its customers that accessed the Internet via cable modem or DSL service); SBC Remand Comments at 45 (citing examples of CLEC offering free service to ISPs that collocated in its switching centers and CLECs offering to share reciprocal compensation revenues with ISPs).

FN135. See, e.g., Verizon Remand Comments at 17-18.

FN136. The NPRM that we adopt in conjunction with this Order seeks comment on the degree to which a modified CPNP regime might address these concerns.

FN137. Local Competition Order, 11 FCC Rcd at 16054-55; see also 47 C.F.R. § 51.713(b).

FN138. Local Competition Order, 11 FCC Rcd at 16055 (emphases added).

FN139. Id. at 16055.

FN140. We also note that bill and keep arrangements are common among entities providing Internet backbone services, where the larger carriers engage in so-called "peering" arrangements.

FN141. Time Warner Remand Comments at 15-16.

FN142. Time Warner Remand Comments at 16. Some parties suggest that a bifurcated rate structure (a call set-up charge and a minute of use charge) would ensure appropriate cost recovery. See Sprint Remand Comments at 2-4. We seek comment on this approach in the NPRM.

FN143. See *infra* note 158.

FN144. We note that many CLECs expressed the same view following adoption of the Declaratory Ruling in 1999, yet the problems persist. See, e.g., Cox Reply Comments at 6 (If termination "rates are too high, this is entirely at the ILEC's behest, and should be remedied in the next round of negotiations.").

FN145. A number of questions must be resolved before we are prepared to implement fully a bill and keep regime where most costs are recovered from end-users. (We say most, not all, costs are recovered from end-users because a bill and keep regime may include intercarrier charges for transport between networks.) These questions include, for example, the allocation of transport costs between interconnecting carriers and the effect on retail prices of adopting a bill and keep regime that is not limited to ISP-bound traffic. We seek comment on these and other issues in the accompanying intercarrier NPRM.

FN146. Cf. Verizon Remand Reply Comments at 14-15.

FN147. The problem of putting a per minute price tag, in the form of intercarrier payments, where no per minute cost exists is exacerbated in the case of local exchange carriers that, in most cases, recover costs from their end-users on a flat-rated basis.

FN148. See, e.g., Local Competition Order, 11 FCC Rcd at 16028-29.

FN149. This interim regime affects only the intercarrier compensation (i.e., the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection.

FN150. See Texas Public Utility Commission, Docket No. 21982, Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996, at 36 (July 12, 2000) (applying a blended tandem switching rate to traffic up to a 3:1 (terminating to originating) ratio; traffic above that ratio is presumed to be convergent traffic and is compensated at the end office rate unless the terminating carrier can prove tandem functionality); New York Public Service Commission, Op. No. 99-10, Proceeding on Motion of the Commission to Reexamine Reciprocal compensation, Opinion and Order, at 59-60 (Aug. 26, 1999) (traffic above a 3:1 ratio is presumed to be convergent traffic and is compensated at the end office rate unless the terminating carrier can demonstrate "that [the terminating] network and service are such as to warrant tandem-rate compensation"); Massachusetts Dept. of Telecommunications and Energy, D.T.E. 97-116-C, at 28-29 n.31 (May 19, 1999) (requiring reciprocal compensation for traffic that does not exceed a 2:1

(terminating to originating) ratio as a proxy to distinguish ISP-bound traffic from voice traffic; carriers may rebut that presumption).

FN151. We note that CLEC end-user recovery is generally not regulated. As non-dominant carriers, CLECs can charge their end-users what the market will bear. Access Charge Reform, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd 12962, 13005 (2000) (CALLS Order) ("Competitive LECs are not regulated by the Commission and are not restricted in the same manner as price caps LECs in how they recover their costs."). Accordingly, we permit CLECs to recover any additional costs of serving ISPs from their ISP customers. ILEC end-user charges, however, are generally regulated by the Commission, in the case of interstate charges, or by state commissions, for intrastate charges. Pursuant to the ESP exemption, ILECs will continue to serve their ISP customers out of intrastate business tariffs that are subject to state regulation. As the Commission said in 1997, if ILECs feel that these rates are so low as to preclude cost recovery, they should seek relief from their state commissions. Access Charge Reform Order, 12 FCC Rcd at 16134 ("To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators." (emphasis added)).

FN152. Thus, if a state has ordered all LECs to exchange ISP-bound traffic on a bill and keep basis, or if a state has ordered bill and keep for ISP-bound traffic in a particular arbitration, those LECs subject to the state order would continue to exchange ISP-bound traffic on a bill and keep basis.

FN153. See American Public Communications Council v. FCC, 215 F.3d 51 (D.C. Cir. 2000) ("Where existing methodology or research in a new area of regulation is deficient, the agency necessarily enjoys broad discretion to attempt to formulate a solution to the best of its ability on the basis of available information.").

FN154. 47 U.S.C. § 252(i) (requiring LECs to "make available any interconnection, service, or network element provided under an agreement approved under this section" to "any other requesting telecommunications carrier"). This Order will become effective 30 days after publication in the Federal Register. We find there is good cause under 5 U.S.C. § 553(d)(3), however, to prohibit carriers from invoking section 252(i) with respect to rates paid for the exchange of ISP-bound traffic upon publication of this Order in the Federal Register, in order to prevent carriers from exercising opt in rights during the thirty days after Federal Register publication. To permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here during that window would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery.

FN155. In any event, our rule implementing section 252(i) requires incumbent LECs to make available "[i]ndividual interconnection, service, or network element arrangements" to requesting telecommunications carriers only "for a reasonable period of time." 47 C.F.R. § 51.809(c). We conclude that any "reasonable period of time" for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic.

FN156. Access Charge Reform Order, 12 FCC Rcd at 16133-34.

FN157. See, e.g., Letter from David J. Hostetter, SBC, to Magalie Roman Salas, Secretary, FCC (Feb. 14, 2001), Attachment (citing September 2000 Morgan Stanley Dean Witter report that discusses utilization of lower cost switch technology); Donny Jackson, "One Giant Leap for Telecom Kind?," Telephony, Feb. 12, 2001, at 38 (discussing cost savings associated with replacing circuit switches

with packet switches); Letter from Gary L. Phillips, SBC, to Magalie Roman Salas, Secretary, FCC (Feb. 16, 2001) (attaching press release from Focal Communications announcing planned deployment of next-generation switching technology "at a fraction of the cost of traditional equipment"); see also *infra* para. 93.

FN158. The Commission takes notice of the following interconnection agreements: (1) Level 3 Communications and SBC Communications (effective through May 2003): This 13-state agreement has two sets of rates. For balanced traffic, the rate is \$.0032/mou. For traffic that is out of balance by a ratio exceeding 3:1, the rate starts at \$.0018/mou, declining to a weighted average rate of \$.0007/mou by June 1, 2002. See PR Newswire, WL PRWIRE 07:00:00 (Jan. 17, 2001); Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, Attachment (Jan. 19, 2001). (2) ICG Communications and BellSouth (retroactively effective to Jan. 1, 2000): This agreement provides for rates to decline over three years, from \$0.002/mou to \$0.00175/mou to \$0.0015/mou. See *Communications Daily*, 2000 WL 4694709 (Mar. 15, 2000). (3) KMC Telecom and BellSouth: This agreement provides for a rate of \$0.002/mou in 2000, \$0.00175/mou in 2001, \$0.0015/mou in 2002. See *Business Wire*, WL 5/18/00 BWIRE 12:50:000 (May 18, 2000). (4) Level 3 Communications and Verizon (formerly Bell Atlantic) (effective Oct. 14, 1999): This agreement governs all of the former Bell Atlantic/NYNEX states. The applicable rate declines over the term of the agreement from \$.003/mou in 1999 to rates in 2001 of \$.0015/mou for balanced traffic and \$.0012/mou where the traffic imbalance exceeds a 10:1 ratio. See Letter from Joseph J. Mulieri, Bell Atlantic, to Magalie Roman Salas, Secretary, FCC (Nov. 22, 1999)(attaching agreement); see also Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, at 2 (Jan. 4, 2001)(reciprocal compensation rate in most recent Level 3 - Verizon agreement is now \$.0012/mou in all states except New York, where the rate is \$.0015/mou).

FN159. In the Level 3 - SBC agreement, the applicable rate is \$.0018/mou for traffic that exceeds a 3:1 ratio; in the Level 3 - Verizon agreement, the applicable rate is \$.0015/mou for balanced traffic and \$.0012/mou for traffic that exceeds a 10:1 ratio. See *supra* note 158.

FN160. See Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC, at 3 (Dec. 19, 2000).

FN161. See *supra* note 158.

FN162. See, e.g., Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC (Dec. 18, 2000) (offering evidence that dial-up traffic per household will grow only 7%/year from 1998 to 2003 and that dial-up household penetration will decline between 2000 and 2003); Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC (Jan. 9, 2001)(citing, *inter alia*, Merrill Lynch estimate of 7% annual increased Internet usage per user between 1999 and 2003, and PricewaterhouseCoopers' study suggesting that Internet usage per user declined from 1999 to 2000).

FN163. See, e.g., Letter from Robert T. Blau, BellSouth, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Dec. 22, 2000) (forecasting 42% annual growth in total Internet access minutes between 2000 and 2003); but see Dan Beyers, "Internet Use Slipped Late Last Year," *Washingtonpost.com*, Feb. 22, 2001, at E10 (noting decline in average time spent online in 2000).

FN164. See, e.g., Time Warner Remand Comments at 4-5; Centennial Remand Comments at 2, 6-7.

FN165. *Access Charge Reform Order*, 12 FCC Rcd at 16134; *MTS/WATS Market Structure Order*, 97 FCC 2d at 720-721.

FN166. See *infra* para. 93.

FN167. See Letter from Robert T. Blau, BellSouth, et al., to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 4 (Nov. 3, 2000); SBC Remand Comments at 42, 51, 57.

FN168. We do not suggest that it costs CLECs less to serve ISPs than other types of customers. New switching technologies make it less costly to serve all customers. If, however, costs are lower than prevailing reciprocal compensation rates, then CLECs are likely to target customers, such as ISPs, with predominantly incoming traffic, in order to maximize the resulting profit.

FN169. See, e.g., Verizon Remand Comments at 16.

FN170. *Id.*

FN171. Most CLECs assert that they compete with ILECs on service, not price, and that the rates they charge to ISPs are comparable to the ILEC rates for the same services. See, e.g., Time Warner Remand Comments at 5. We acknowledge, however, that any CLECs that use reciprocal compensation payments to offer below cost service to ISPs may be unable to continue that practice under the compensation regime we adopt here. We reiterate that we see no public policy reason to maintain a subsidy running from ILEC end-users to ISPs and their customers.

FN172. See, e.g., Letter from Robert W. McCausland, Allegiance Telecom; Kelsi Reeves, Time Warner Telecom; Richard J. Metzger, Focal, R. Gerard Salemme, XO Communications; and Heather B. Gold, Intermedia; to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 6 (Oct. 20, 2000).

FN173. See, e.g., SBC Remand Reply Comments at 31-32 (explaining how an ILEC may incur additional switching and transport costs when its end-user customer calls an ISP served by a CLEC).

FN174. See Access Charge Reform Order, 12 FCC Rcd at 16134; see also MTS/WATS Market Structure Order, 97 FCC 2d at 721 (the local business line rate paid by ISPs subsumes switching costs). Moreover, most states have adopted price cap regulation of local rates, in which case rates do not necessarily correlate to cost in the manner the CLECs suggest. See "Price Caps Standard Form of Telco Regulation in 70% of States," Communications Daily, 1999 WL 7580319 (Sept. 8, 1999).

FN175. The four largest incumbent LECs - SBC, BellSouth, Verizon, and Qwest - estimate that they owed over \$2 billion in reciprocal compensation for ISP-bound traffic in 2000. See, e.g., Letter from Robert T. Blau, BellSouth, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Jan. 16, 2001).

FN176. More calls are made from wireless phones to wireline phones than vice-versa. The ILECs, therefore, are net recipients of reciprocal compensation from wireless carriers.

FN177. Pursuant to the analysis we adopt above, section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic delivered to an IXC or an information service provider, and to telecommunications traffic between a LEC and a CMRS provider that originates and terminates within the same MTA. See *supra* § IV.B.

FN178. If, however, a state has ordered bill and keep for ISP-bound traffic only with respect to a particular interconnection agreement, as opposed to state-wide, we do not require the incumbent LEC to offer to exchange all section 251(b)(5) traffic on a bill and keep basis. This limitation is necessary

so that an incumbent is not required to deliver all section 251(b)(5) in a state on a bill and keep basis even though it continues to pay compensation for most ISP-bound traffic in that state. See, e.g., Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC (April 2, 2001) (citing, for example, Washington state, where 16% of ISP-bound traffic is subject to bill and keep). In those states, the rate caps we adopt here will apply to ISP-bound traffic that is not subject to bill and keep under the particular interconnection agreement if the incumbent LEC offers to exchange all section 251(b)(5) traffic subject to those rate caps.

FN179. ILECs may make this election on a state-by-state basis.

FN180. Many commenters argue that there is, in fact, no difference between the cost and network functions involved in terminating ISP-bound calls and the cost and functions involved in terminating other calls to users of the public switched telephone network. See, e.g., AOL Comments at 10-12 ("there is absolutely no technical distinction, and therefore no cost differences, between the way an incumbent LEC network handles ISP-destined traffic and the way it handles other traffic within the reciprocal compensation framework."); AT&T Comments at 10-11 ("[T]here is no economic justification for subjecting voice and data traffic to different compensation rules." "ILECs have not demonstrated, and cannot demonstrate, that the costs of transporting and terminating data traffic differ categorically from the costs of transporting and terminating ordinary voice traffic."); Choice One Comments at 8 ("[C]osts do not vary significantly based on whether data or voice traffic is being transmitted."); Corecomm Reply at 2 (network functions are identical whether a carrier is providing service to an ISP or any other end-user); Cox Comments at 7 & Exhibit 2, Statement of Gerald W. Brock at 2 ("None of the distinctions between ISP calls and average calls relate to a cost difference for handling the calls."); MediaOne Comments at 4 (ILECs incur the same costs for terminating calls to an ISP as they do for terminating any other local calls); Time Warner Comments at 9 ("[A]ll LECs perform the same functions when transporting and delivering calls to ISP end-users as they do when transporting and delivering calls to other end-users. When LECs perform the same functions, they incur the same costs."); Letter from Donald F. Shephard, Time Warner Telecom, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Feb. 28, 2001)(disputing claim that CLEC switching costs are as low as the ILECs argue).

FN181. See, e.g., Cox Comments at Exhibit 2, Statement of Gerald W. Brock at 2.

FN182. See, e.g., Intermedia Comments at 3-4 (arguing that the rates for transport and termination of ISP-bound traffic must be identical to the rates established for the transport and termination of local traffic).

FN183. See Verizon Remand Comments, Declaration of William E. Taylor at 14, 17.

FN184. See Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 14. See also Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC, Attachment at 7-8 (Oct. 26, 2000).

FN185. See Verizon Remand Comments, Declaration of William E. Taylor at 14-15.

FN186. See Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 10-11. Time Warner also disputes that the "average duration of calls to ISPs has been accurately measured to date." *Id.* at 11.

FN187. See Verizon Remand Comments, Declaration of William E. Taylor at 17-18.

FN188. See Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 14-15.

FN189. See Letter from Gary L. Phillips, Ameritech, to Magalie Roman Salas, Secretary, FCC, Attachment at 5 (Sept. 14, 1999). See also SBC Remand Comments at 32-33 (referring to Global NAPS Comments, Exhibit 1, Statement of Fred Goldstein at 6, which describes CLEC reduction of loop costs through collocation); Letter from Melissa Newman, U S West, to Magalie Roman Salas, Secretary, FCC, Attachment at 8 (Dec. 2, 1999).

FN190. See Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 25.

FN191. See Local Competition Order, 11 FCC Rcd at 16025.

FN192. SBC Remand Comments at 33.

FN193. SBC Remand Comments at 33-34 (referring, inter alia, to "managed modem" switches).

FN194. GTE Comments at 7-8 (noting the existence of SS7 bypass devices that can avoid circuit switching and arguing that competitive LEC networks are far less complex and utilize fewer switches than incumbent LEC networks); GTE Reply Comments at 16 (compensating competitive LECs based on an incumbent LEC's costs inflates the revenue that competitive LECs receive); Letter from W. Scott Randolph, GTE, to Magalie Roman Salas, Secretary, FCC, Attachment (Dec. 8, 1999 (new generation traffic architectures may use SS7 Gateways instead of more expensive circuit-switched technology)).

FN195. See, e.g., Letter from John D. Windhausen, Jr., ALTS, and H. Russell Frisby, Jr., CompTel, to Kyle Dixon, Legal Advisor, Chairman Michael Powell, FCC, at 4-5 (March 16, 2001)(Focal is testing two softswitches, but as of now all ISP-bound traffic terminated by Focal uses traditional circuit switches; Allegiance Telecom has a single softswitch in its network; Advanced Telecom Group, Inc. is in the testing phase of softswitch deployment; Pac-West Telecomm, Inc., does not have any softswitches in its network; e.spire uses only circuit switches to terminate ISP-bound traffic); Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 27 (Time Warner is "deploying fully functional end office switches"); Letter from Donald F. Sheppard, Time Warner, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 3 (February 28, 2001)(Time Warner "does not provide managed modem services." Like the ILECs, Time Warner "has an extensive network of circuit switched technology" and has only just begun to deploy softswitches); Letter from Teresa Marrero, AT&T, to Magalie Roman Salas, Secretary, FCC, at 1 (April 11, 2001) ("Virtually all of AT&T's ISP-bound traffic is today terminated using full circuit switches.").

FN196. See Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 28; see also Letter from Donald F. Sheppard, Time Warner, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 3 (Feb. 28, 2001)("if softswitch technology will lower carriers' costs, then all carriers, including the ILECs [,] will have incentive to deploy them"); Letter from John D. Windhausen, Jr., ALTS, and H. Russell Frisby, Jr., CompTel, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 4 (February 16, 2001)(same).

FN197. See, e.g., Letter from Karen L. Gulick, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, at 1 (Dec. 22, 2000).

FN198. See CALLS Order, 15 FCC Rcd at 12974.

FN199. The PICC, or presubscribed interexchange carrier charge, and the CCLC, carrier common line

charge, are charges levied by incumbent LECs upon IXC's to recover portions of the interstate-allocated cost of subscriber loops. See 47 C.F.R. §§ 69.153, 69.154.

FN200. CALLS Order, 15 FCC Rcd at 12975 (permitting a greater proportion of the local loop costs of primary residential and single-line business customers to be recovered through the SLC).

FN201. CALLS Order, 15 FCC Rcd at 12977 (The CALLS proposal is aimed to "bring lower rates and less confusion to consumers; and create a more rational interstate rate structure. This, in turn, will support more efficient competition, more certainty for the industry, and permit more rational investment decisions.").

FN202. Bell Atlantic, 206 F.3d at 8.

FN203. See 5 U.S.C. § 603.

FN204. Declaratory Ruling, 14 FCC Rcd at 3710-13.

FN205. See 5 U.S.C. § 604. The Regulatory Flexibility Act, 5 U.S.C. § 601 et. seq., was amended by the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), which was enacted as Title II of the Contract With America Advancement Act of 1996, Pub.L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

FN206. Declaratory Ruling and Intercarrier Compensation NPRM, 14 FCC Rcd at 3707.

FN207. Declaratory Ruling and Intercarrier Compensation NPRM, 14 FCC Rcd at 3711.

FN208. See Bell Atlantic, 206 F.3d 1.

FN209. Office of Advocacy, U.S. Small Business Administration ex parte, May 27, 1999; Office of Advocacy, U.S. Small Business Administration ex parte, June 14, 1999.

FN210. Office of Advocacy, U.S. Small Business Administration ex parte, May 27, 1999, at 1-3; Office of Advocacy, U.S. Small Business Administration ex parte, June 14, 1999, at 2-3.

FN211. Declaratory Ruling and Intercarrier Compensation NPRM, 14 FCC Rcd at 3711.

FN212. Declaratory Ruling and Intercarrier Compensation NPRM, 14 FCC Rcd at 3711.

FN213. See supra paras. 87-88.

FN214. Office of Advocacy, U.S. Small Business Administration ex parte, June 14, 1999, at 3.

FN215. Declaratory Ruling [IRFA], 14 FCC Rcd at 3711 (para. 39); see also Declaratory Ruling, 14 FCC Rcd at 3707-08 (paras. 30-31).

FN216. NTCA Comments at vi, 15.

FN217. See, e.g., ICORE Comments at 1-7; IURC Comments at 7; Richmond Telephone Company Comments at 1-8.

FN218. 5 U.S.C. § 601(6).

FN219. 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

FN220. 15 U.S.C. § 632.

FN221. 13 C.F.R. § 121.201.

FN222. FCC, Carrier Locator: Interstate Service Providers, Figure 1 (Jan. 2000) (Carrier Locator).

FN223. Carrier Locator at Fig. 1.

FN224. 5 U.S.C. § 601(3).

FN225. Office of Advocacy, U.S. Small Business Administration ex parte, May 27, 1999, at 1-3; Office of Advocacy, U.S. Small Business Administration ex parte, June 14, 1999, at 2-3. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

FN226. United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

FN227. 15 U.S.C. § 632(a)(1).

FN228. 1992 Census at Firm Size 1-123.

FN229. 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4813.

FN230. 13 C.F.R. § 121.201, SIC Code 4813.

FN231. Carrier Locator at Fig. 1.

FN232. Declaratory Ruling, 14 FCC Rcd at 3707-10.

FN233. See supra paras. 67-76 (rejecting application of a reciprocal compensation mechanism to ISP-bound traffic).

FN234. We note, however, that the interim regime we adopt here governs for 36 months or until further action by the Commission, whichever is longer.

FN235. 5 U.S.C. § 801(a)(1)(A).

FN236. See 5 U.S.C. § 604(b).

## List of Commenters in CC Docket Nos. 96-98, 99-68

## Comments Filed in Response to the June 23, 2000 Public Notice

Advanced TelCom Group, Inc.; e.spire Communications, Inc.; Intermedia Communications, Inc.; KMC Telecom, Inc.; Nextlink Communications, Inc.; The Competitive Telecommunications Association  
 Alliance for Public Technology  
 Association of Communications Enterprises  
 Association for Local Telecommunications Services  
 AT&T Corp. (AT&T)  
 BellSouth Corporation  
 Cablevision Lightpath, Inc.  
 California State and California Public Utilities Commission  
 Centennial Communications Corp. (Centennial)  
 Florida Public Service Commission  
 Focal Communications Corporation, Allegiance Telecom, Inc., and Adelpia Business Solutions, Inc.  
 General Services Administration  
 Global NAPs, Inc.  
 ICG Telecom Group, Inc.  
 Keep America Connected; National Association of the Deaf; National Association of Development Organizations; National Black Chamber of Commerce; New York Institute of Technology; Ocean of Know; Telecommunications for the Deaf, Inc.; United States Hispanic Chamber of Commerce  
 Massachusetts Department of Telecommunications & Energy  
 Missouri Public Service Commission  
 National Consumers League  
 National Exchange Carrier Association, Inc.  
 New York Department of Public Service  
 Pac-West Telecomm, Inc.  
 Pennsylvania Office of Consumer Advocate  
 Prism Communications Services, Inc.  
 Qwest Corporation  
 RCN Telecom Services, Inc. and Connect Communications Corporation  
 RNK, Inc.  
 Rural Independent Competitive Alliance  
 SBC Communications, Inc. (SBC)  
 Sprint Corporation (Sprint)  
 Texas Public Utility Commission  
 Time Warner Telecom Inc. (Time Warner)  
 United States Telecom Association  
 Verizon Communications (Verizon)  
 Western Telephone Integrated Communications, Inc.  
 WorldCom, Inc.

## \*9206 Reply Comments Filed in Response to the June 23, 2000 Public Notice

Adelpia Business Solutions, Inc.; Allegiance TeleCom, Inc., Focal Communications Corporation, and RCN Telcom Services, Inc.  
 AT&T Corp.  
 BellSouth Corporation

Cablevision Lightpath, Inc.  
Cincinnati Bell Telephone Company  
Commercial Internet Exchange Association  
Converscent Communications, LLC  
Covad Communication Company  
Duckenfield, Pace  
e.spire Communications, Inc., Intermedia Communications Inc., KMC Telecom, Inc., NEXTLINK  
Communications, Inc., The Association for Local Telecommunications Services, and The  
Competitive Telecommunications Association  
General Services Administration  
Global NAPs, Inc.  
ICG Telecom Group, Inc.  
Keep America Connected; National Association of Development Organizations; National Black  
Chamber of Commerce; New York Institute of Technology; United States Hispanic Chamber of  
Commerce  
Pac-West Telecomm, Inc.  
Prism Communications Services, Inc.  
Qwest Corporation  
Riter, Josephine  
SBC Communications, Inc. (SBC)  
Sprint Corporation  
Time Warner Telecom Inc. (Time Warner)  
US Internet Industry Association  
United States Telecom Association  
Verizon Communications (Verizon)  
Western Telephone Integrated Communications, Inc.  
WorldCom, Inc.

\*9207 Comments Filed in Response to the February 26, 1999 Notice of Proposed Rulemaking

Airtouch Paging  
America Online, Inc. (AOL)  
Ameritech  
Association for Local Telecommunications Services  
AT&T Corp. (AT&T)  
Baldwin, Jesse  
Bardsley, June  
Bell Atlantic Corporation  
BellSouth Corporation  
Cablevision Lightpath, Inc.  
California Public Utilities Commission  
Choice One Communications (Choice One)  
Cincinnati Bell Telephone Company  
Commercial Internet eXchange Association  
Competitive Telecommunications Association)  
Corecomm Limited  
Cox Communications, Inc. (Cox)  
CT Cube, Inc. & Leaco Rural Telephone Cooperative, Inc.  
CTSI, Inc.  
Florida Public Service Commission  
Focal Communications Corporation

Frontier Corporation  
General Communication, Inc.  
General Services Administration  
Global NAPs Inc.  
GST Telecom, Inc.  
GTE Services Corporation (GTE)  
GVNW Consulting, Inc.  
Hamilton, Dwight  
ICG Communications  
ICORE, Inc.  
Indiana Utility Regulatory Commission  
Information Technology Association of America  
Intermedia Communications Inc. (Intermedia)  
Keep America Connected; Federation of Hispanic Organizations of the Baltimore Metropolitan Area,  
Inc; Latin American Women and Supporters; League of United Latin American Citizens;  
Massachusetts Assistive Technology Partnership; National Association of Commissions for Women;  
National Association of Development Organizations; National Hispanic Council on Aging; New York  
Institute of Technology; Resources for Independent Living; Telecommunications Advocacy Project;  
The Child Health Foundation; The National Trust for the Development of African American Men;  
United Homeowners Association; United Seniors Health Cooperative  
KMC Telecom Inc.  
Lewis, Shawn  
Lloyd, Kimberly, D.  
\*9208 MCI WorldCom, Inc.  
MediaOne Group (Media One)  
Miner, George  
Missouri Public Service Commission  
National Telephone Cooperative Association  
New York State Department of Public Service  
Pennsylvania Public Utility Commission  
Personal Communications Industry Assoc.  
Public Utility Commission of Texas  
Prism Communications Services, Inc.  
RCN Telecom Services, Inc.  
Reinking, Jerome C.  
Richmond Telephone Company  
RNK Inc.  
SBC Communications  
Schaefer, Karl W.  
Sefton, Tim  
Shook, Ofelia E.  
Sprint Corporation  
John Staurulakis, Inc.  
Telecommunications Resellers Association  
Telephone Association of New England  
Thomas, William J.  
Time Warner Telecom Inc. (Time Warner)  
United States Telephone Association  
Verio Inc.  
Vermont Public Service Board  
Virgin Islands Telephone Corporation

Wisconsin State Telecommunications Association

Reply Comments Filed in Response to the February 26, 1999 Notice of Proposed Rulemaking

Airtouch Paging

Ameritech

Association for Local Telecommunications Services

AT&T Corp.

Bell Atlantic Corporation

BellSouth Corporation and BellSouth Telecommunications, Inc.

Competitive Telecommunications Association

Corecomm Limited (CoreComm)

Cox Communications, Inc. (Cox)

Focal Communications Corporation

General Services Administration

Global NAPs Inc.

GST Telecom Inc.

GTE Services Corporation (GTE)

GVNW Consulting, Inc.

\*9209 ICG Communications, Inc

Illinois Commerce Commission

Intermedia Communications Inc.

KMC Telecom Inc.

MCI WorldCom, Inc.

National Exchange Carrier Association, Inc.

National Telephone Cooperative Association

Network Plus, Inc.

New York State Department of Public Services

Pac-West Telecomm., Inc.

Pennsylvania Public Utility Commission

Personal Communications Industry Association

Prism Communications Services, Inc.

Public Service Commission of Wisconsin

RCN Telecom Services

RNK Telecom

SBC Communications, Inc.

Sprint Corporation

Supra Telecommunications & Information Systems, Inc.

TDS Telecommunications Corporation

Time Warner Telecom

United States Telephone Association

US West Communications, Inc.

Verio Inc.

Virgin Islands Telephone Corporation

Wyoming Public Service Commission

\*9210 Appendix B - Final Rules

## AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Part 51, Subpart H, of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

1. The title of part 51, Subpart H, is revised to read as follows:

Subpart H--Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

2. Section 51.701(b) is revised to read as follows:

(a) § 51.701 Scope of transport and termination pricing rules.

\*\*\*\*\*

(b) Telecommunications traffic. For purposes of this subpart, telecommunications traffic means:

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC 01-131, paras. 34, 36, 39, 42-43); or

(2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

3. Sections 51.701(a), 51.701(c) through (e), 51.703, 51.705, 51.707, 51.709, 51.711, 51.713, 51.715, and 51.717 are each amended by striking "local" before "telecommunications traffic" each place such word appears.

\*9211 SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic (CC Docket Nos. 96-98, 99-68)

In this Order, we re-affirm our prior conclusion that telecommunications traffic delivered to Internet service providers (ISPs) is subject to our jurisdiction under section 201 of the Act. Thus, we reject arguments that section 251(b)(5) applies to this traffic. I firmly believe that this Order is supported by reasonable interpretations of statutory provisions that read together are ambiguous and, absent a reconciling interpretation, conflicting.

I also support the fact that this Order, for the first time, establishes a transition mechanism that will gradually wean competitive carriers from heavy reliance on the excessive reciprocal compensation charges that incumbents have been forced to pay these competitors for carrying traffic from the incumbent to the ISP. This transition mechanism was carefully crafted to balance the competing interests of incumbent and competitive telephone companies and other parties, so as not to undermine the Act's goal of promoting efficient local telephone competition.

I write separately only to emphasize a few points:

As an initial matter, I respectfully disagree with the objections to our conclusion that section 251(g) "carves out" certain categories of services that, in the absence of that provision, would likely be subject to the requirements of section 251(b)(5). [FN1] Section 251(b)(5)'s language first appears to be far-reaching, in that it would seem to apply, by its express terms, to all "telecommunications." [FN2] There is apparently no dispute, however, that at least one category of the LEC-provided telecommunications services enumerated in section 251(g) (namely, "exchange access") is not subject to section 251(b)(5), despite the broad language of this provision. Indeed, the Bell Atlantic Court appears to have endorsed that conclusion. [FN3] The question then arises whether the other categories of traffic that are enumerated in section 251(g) (including, "information access") should also be exempted from the application of section 251(b)(5). We answer this question in the affirmative, and no justification (compelling or otherwise) has been offered for why only one service - exchange access - should be afforded disparate treatment in the construction of section 251(g). I would note, moreover, that on the only other occasion in \*9212 which the Commission directly addressed the question whether section 251(g) serves as such a "carve-out," the Commission concluded, as we do here, that it does perform that function. [FN4]

Nor do I find the position we adopt here irreconcilable with our decision in the Advanced Services

Remand Order. [FN5] In discussing the term "information access" in that Order, we were not addressing the question whether section 251(g) exempts certain categories of traffic provided by LECs to ISPs and interexchange carriers from the other requirements of section 251. Rather, we addressed only the relationship between "information access" and the categories of "exchange access" and "telephone exchange service." Specifically, we "decline[d] to find that information access services are a separate category of services, distinct from, and mutually exclusive with, telephone exchange and exchange access services." [FN6] But under the reading of section 251(g) put forth in this Order, the question whether information access is distinct from these other services is irrelevant. Because information access is specifically enumerated in section 251(g), it is not subject to the requirements of section 251(b)(5), whether or not that category of service overlaps with, or is distinct from, telephone exchange service or exchange access.

Similarly, I reject the suggestion that section 251(g) only preserves the MFJ requirements. The language of section 251(g) specifically refers to "each local exchange carrier," not just to the Bell Operating Companies. [FN7] Section 251(g) also expressly refers to any "regulation, order, or policy of the Commission." [FN8] Such clauses support the reading of section 251(g) that we adopt today. [FN9]

Finally, I disagree that section 251(g) cannot be construed to exempt certain categories of traffic from the requirements of section 251(b)(5), simply because the former provision does not include the words "exclude" or "reciprocal compensation" or "telecommunications." [FN10] As I have said, our reading that the categories of LEC-provided services enumerated in subsection (g) are exempted from reciprocal compensation arises from our duty to give effect to both section 251(g) \*9213 and section 251(b)(5). I also would point out that section 251(g) does include a specific reference to "receipt of compensation," just as the services enumerated in that section (e.g., exchange access, information access) undeniably involve telecommunications. [FN11]

In closing, I would only reiterate that the statutory provisions at issue here are ambiguous and, absent a reconciling interpretation, conflicting. Thus, the Commission has struggled long and hard in an effort to give as full a meaning as possible to each of the provisions in a manner we conclude is consistent with the statutory purpose. It would not be overstating matters to acknowledge that these issues are highly complex, disputed and elusive, and that what we decide here will have enormous impact on the development of new technologies and the economy more broadly. It is for their relentless efforts to wrestle with (and now resolve) these issues that I am deeply grateful to my colleagues and our able staff.

FN1. To be more precise, section 251(g) refers to certain categories of service provided by LECs to ISPs and interexchange carriers. 47 U.S.C. § 251(g). In this statement, I use a short-hand reference to the "categories of services" enumerated in section 251(g).

FN2. 47 U.S.C. § 251(b)(5).

FN3. See cf. *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 4 (D.C. Cir. 2000) ("Although [section] 251(b)(5) purports to extend reciprocal compensation to all 'telecommunications,' the Commission has construed the reciprocal compensation requirement as limited to local traffic."). The Court then went on to conclude that the Commission had not provided an adequate explanation of why LECs that carry traffic to ISPs are providing "'exchange access,' rather than 'telephone exchange service.'" *Id.* at 9. The Court does not appear to have questioned anywhere in its opinion the notion that the scope of the reciprocal compensation requirement does not extend to certain categories of LEC-provided services, including "exchange access."

FN4. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Dkt. Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499 (1996), ¶ 1034.

FN5. Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Dkt. Nos. 98-147 et al., Order on Remand, 15 FCC Rcd 385 (1999) (Advanced Services Remand Order); see also *WorldCom, Inc. v. FCC*, No. 00-1002 (D.C. Cir. filed Apr. 20, 2001) (affirming Advanced Services Remand Order on one of the alternative grounds proffered by the Commission).

FN6. Advanced Services Remand Order, 15 FCC Rcd at 406, ¶ 46.

FN7. 47 U.S.C. § 251(g).

FN8. *Id.*

FN9. Had the language of section 251(g) been limited to the Bell Companies or to court orders and consent decrees, for example, perhaps one could construct an argument that Congress meant to limit the scope of section 251(g) to the MFJ requirements.

FN10. Section 251(b)(5) states that all LECs must "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(g) (emphasis added).

FN11. As the Order suggests, Section 251(g) enumerates "exchange access," "information access" and "exchange services for such access." 47 U.S.C. § 251(g). For purposes of subsection (g), all of these services are provided by LECs to "interexchange carriers and information service providers." These three categories undeniably involve telecommunications. "Information access" was defined in the MFJ as "the provision of specialized exchange telecommunications services" to information service providers. United States v. AT&T, 552 F. Supp. 131, 196, 229 (D.D.C. 1982). The term "exchange service" as used in section 251(g) is not defined in the Act or in the MFJ. Rather, the term "exchange service" is used in the MFJ as part of the definition of the term "exchange access," which the MFJ defines as "the provision of exchange services for the purposes of originating or terminating interexchange telecommunications." United States v. AT&T, F. Supp. at 228. Thus, the term "exchange service" appears to mean, in context, the provision of services in connection with interexchange communications. Consistent with that, in section 251(g), the term is used as part of the longer phrase "exchange services for such [exchange] access to interexchange carriers and information service providers." All of this indicates that the term "exchange service" is closely related to the provision of exchange access and information access, and that all three involve telecommunications.

**\*9214 DISSENTING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98, 99- 68.

To some observers, the Telecommunications Act of 1996 ("1996 Act"), in general, and sections 251 and 252 (47 U.S.C. §§ 251 and 252), in particular, have become unnecessary inconveniences. The poster child for those who proclaim the 1996 Act's failure is reciprocal compensation. It has led to large billings - some paid, some unpaid - among telecommunications carriers. These billings have not shrunk, in large part because the Commission's interpretation of the pick-and-choose provision of the Act (47 U.S.C. § 252(i)) has led to unstable contracts, with perverse incentives for renegotiation. Reciprocal compensation is an obscure and tedious topic. It is not, however, a topic that Congress overlooked. To the contrary, in describing reciprocal compensation arrangements in sections 251 and 252, Congress went into greater detail than it did for almost any other commercial relationship between carriers covered in the 1996 Act. Among other things, Congress mandated that reciprocal

compensation arrangements would be: (1) made by contract; (2) under State supervision; (3) at rates to be negotiated or arbitrated; and (4) would utilize a bill-and-keep plan only on a case-by-case basis under specific statutory conditions. See 47 U.S.C. §§ 251(b)(5), 252(a), 252(b), 252(d)(2).

Faced with these statutory mandates, how should the large billings for reciprocal compensation be addressed? Renegotiating contracts would be the simple market solution, only made precarious by our pick-and-choose rules. Another solution would be to seek review of reciprocal compensation agreements by State commissions. Other solutions would be for this Commission to change its pick-and-choose rules or to issue guidelines for State commission decisions (see AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 385 (1999)).

Each of these solutions, of course, would reflect at least a modicum of respect for States, their lawmakers, their regulators, federal law, and the Congress that enacted the 1996 Act. Each would also be consistent with, and respectful of, the prior ruling on reciprocal compensation by the Court of Appeals for the D.C. Circuit. See Bell Atlantic Tel. Cos. v. FCC, 206 F.3d 1 (D.C. Cir. 2000).

There is, however, one solution that is not respectful of other governmental institutions. It is a solution that places under exclusive federal jurisdiction broad expanses of telecommunications. It is a solution that does not directly solve the problem at hand. It is a solution that can be reached only through a twisted interpretation of the law and a vitiation of economic reasoning and general common sense. That solution is nationwide price regulation. That is the regrettable solution the Commission has adopted.

The Commission's decision has broad consequences for the future of telecommunications regulation. In holding that essentially all packetized communications fall within federal jurisdiction, the Commission has dramatically diminished the States' role going forward, as such \*9215 communications are fast becoming the dominant mode. Whatever the merits of this reallocation of authority, it is a reallocation that properly should be made only by Congress. It certainly should not be made, as here, by a self-serving federal agency acting unilaterally.

There is doubtlessly underway a publicity campaign by the proponents of today's action. It will spin nationwide mandatory price regulation as "deregulation." It will spin the abandonment of States and contracts as "good government."

The media might be spun by this campaign. The public might be spun. But it will be far more difficult to convince the courts that the current action is lawful.

#### A Flawed Order From Flawed Decisionmaking

Today's order is the product of a flawed decisionmaking process that occurs all too frequently in this agency. It goes like this. First, the Commission settles on a desired outcome, based on what it thinks is good "policy" and without giving a thought to whether that outcome is legally supportable. It then slaps together a statutory analysis. The result is an order like this one, inconsistent with the Commission's precedent and fraught with legal difficulties.

In March 2000, the Court of Appeals for the D.C. Circuit vacated the Commission's conclusion that section 251(b)(5) does not apply to calls made to Internet service providers ("ISPs"). See Bell Atlantic, 206 F.3d at 9. The court ruled that, among other things, the Commission had not provided a "satisfactory explanation why LECs that terminate calls to ISPs are not properly seen as 'terminating ... local telecommunications traffic,' and why such traffic is 'exchange access' rather than 'telephone exchange service.'" *Id.*

The Commission has taken more than a year to respond to the court's remand decision. My colleagues some time ago decided on their general objective - asserting section 201(b) jurisdiction over ISP-bound traffic and permitting incumbent carriers to ramp down the payments that they make to competitive ones. The delay in producing an order is attributable to the difficulty the Commission has had in putting together a legal analysis to support this result, which is at odds with the agency's own precedent as well as the plain language of the statute.

Today, the Commission rules, once again, that section 251(b)(5) does not apply to ISP-bound traffic.

In a set of convoluted arguments that sidestep the court's objections to its previous order, the Commission now says that ISP-bound traffic is "information access," which, the Commission asserts, is excluded "from the universe of 'telecommunications' referred to in section 251(b)(5)" (Order ¶¶ 23, 30) - despite the Commission's recent conclusion in another context that "information access" is not a separate category of service exempt from the requirements of section 251. See Deployment of Wireline Services Offering Advanced Telecommunications Capability, Order on Remand, 15 FCC Rcd 385, ¶¶ 46-49 (1999) ("Advanced Services Remand Order").

The result will be another round of litigation, and, in all likelihood, this issue will be back at the agency in another couple of years. In the meantime, the uncertainty that has clouded the issue of compensation for ISP-bound traffic for the last five years will continue. The Commission would act far more responsibly if it simply recognized that ISP-bound traffic comes \*9216 within section 251(b)(5). To be sure, this conclusion would mean that the Commission could not impose on these communications any rule that it makes up, as the agency believes it is permitted to do under section 201(b). Rather, the Commission would be forced to work within the confines of sections 251(b)(5) and 252(d)(2), which, among other things, grant authority to State commissions to decide on "just and reasonable" rates for reciprocal compensation. 47 U.S.C. § 252(d)(2). But the Commission surely could issue "rules to guide the state-commission judgments" regarding reciprocal compensation (Iowa Utilities Bd., 525 U.S. at 385) and perhaps could even put in place the same compensation scheme it orders here. At the same time, the confusion that this order will add to the agency's already bewildering precedent on Internet-related issues would be avoided.

#### The Commission's Previous Order and the Court's Remand Decision

To see how far the Commission has come in its attempt to assert section 201(b) jurisdiction over ISP-bound traffic, let us briefly review the court's decision on the Commission's previous order, which receives little attention in the order released today. In its previous order, issued in February 1999, the Commission focused on the jurisdictional nature of ISP-bound traffic. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling, 14 FCC Rcd 3689 (1999) ("Reciprocal Compensation Declaratory Ruling"). Applying an "end-to-end" analysis, the agency concluded that calls to ISPs do not terminate at the ISP's local server, but instead continue to the "ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state." *Id.* ¶ 12. Based on this jurisdictional analysis, the Commission ruled that a substantial portion of calls to ISPs are jurisdictionally interstate, and it described ISP-bound traffic as interstate "access service." *Id.* ¶¶ 17, 18. The Commission reasoned that, since reciprocal compensation is required only for the transport and termination of local traffic, section 251(b)(5)'s obligations did not apply to ISP-bound calls. See *id.* ¶¶ 7, 26.

#### 1. The Court Asked the Commission Why ISPs Are Not Like Other Local Businesses

The court vacated the Commission's decision. It held that, regardless of the jurisdictional issue, the Commission had not persuasively distinguished ISPs from other businesses that use communications services to provide goods or services to their customers. See Bell Atlantic, 206 F.3d at 7. In the court's view, the Commission had failed to explain why "an ISP is not, for purposes of reciprocal compensation, 'simply a communications-intensive business end user selling a product to other consumer and business end- users.'" *Id.* (citation omitted).

#### 2. The Court Asked the Commission Why Calls Do Not Terminate at ISPs

The court also questioned the Commission's conclusion that a call to an ISP did not "terminate" at the ISP. "[T]he mere fact that the ISP originates further telecommunications does not imply that the

original telecommunication does not 'terminate' at the ISP." Id. The court concluded that, "[h]owever sound the end-to-end analysis may be for jurisdictional purposes," the Commission had failed to explain why treating these "linked telecommunications as \*9217 continuous works for purposes of reciprocal compensation." Id.

### 3. The Court Asked the Commission How Its Treatment of ISP-Bound Traffic Is Consistent with Its Treatment of Enhanced Service Providers

The court also wondered whether the Commission's treatment of ISP-bound traffic was consistent with the approach it applies to enhanced service providers ("ESPs"), which include ISPs. See id. at 7-8. The Commission has long exempted ESPs from the access charge system, effectively treating them as end-users of local service rather than long-distance carriers. The court observed that this agency, in the Eighth Circuit access charge litigation, had taken the position "that a call to an information service provider is really like a call to a local business that then uses the telephone to order wares to meet the need." Id. at 8. The court rejected as "not very compelling" the Commission's argument that the ESP exemption is consistent with the understanding that ESPs use interstate access services. Id.

### 4. The Court Asked the Commission Whether ISP-Bound Traffic is "Exchange Access" or "Telephone Exchange Service"

Finally, the court rejected the Commission's suggestion that ISPs are "users of access service." Id. The court noted that the statute creates two statutory categories - "telephone exchange service" and "exchange access" - and observed that on appeal, the Commission had conceded that these categories occupied the field. Id. If the Commission had meant to say that ISPs are users of "exchange access," wrote the court, it had "not provided a satisfactory explanation why this is the case." Id.

### The Commission's Latest Order

Today, the Commission fails to answer any of the court's questions. Recognizing that it could not reach the desired result within the framework it used previously, the Commission offers up a completely new analysis, under which it is irrelevant whether ISP-bound traffic is "local" rather than "long-distance" or "telephone exchange service" rather than "exchange access."

In today's order, the Commission concludes that section 251(b)(5) is not limited to local traffic as it had previously maintained, but instead applies to all "telecommunications" traffic except the categories specifically enumerated in section 251(g). See Order ¶¶ 32, 34. The Commission concludes that ISP-bound traffic falls within one of these categories - "information access" - and is therefore exempt from section 251(b)(5). See id. ¶ 42. The agency wraps up with a determination that ISP-bound traffic is interstate, and it thus has jurisdiction under section 201(b) to regulate compensation for the exchange of ISP-bound traffic. See id. ¶¶ 52-65.

The Commission's latest attempt to solve the reciprocal compensation puzzle is no more successful than were its earlier efforts. As discussed below, its determination that ISP-bound traffic is "information access" and, hence, exempt from section 251(b)(5) is inconsistent with still-warm Commission precedent. Moreover, its interpretation of section 251(g) cannot be reconciled with the statute's plain language.

\*9218 1. Today's decision is a complete reversal of the Commission's recent decision in the Advanced Services Remand Order. In that order, the Commission rejected an argument that xDSL traffic is exempt from the unbundling obligations of section 251(c)(3) as "information access." Among other things, the Commission found meritless the argument that section 251(g) exempts "information access" traffic from other requirements of section 251. Id. ¶ 47. Rather, the Commission explained, "this provision is merely a continuation of the equal access and nondiscrimination provisions of the Consent Decree until superseded by subsequent regulations of the Commission." Id. According to the

Commission, section 251(g) "is a transitional enforcement mechanism that obligates the incumbent LECs to continue to abide by equal access and nondiscriminatory interconnection requirements of the MFJ." Id. The Commission thus concluded that section 251(g) was not intended to exempt xDSL traffic from section 251's other provisions. See id. ¶¶ 47- 49.

In addition, the Commission rejected the contention that "information access" is a statutory category distinct from "telephone exchange service" and "exchange access." See id. ¶ 46. [FN1] It pointed out that "'information access' is not a defined term under the Act, and is cross-referenced in only two transitional provisions." Id. ¶ 47. It ultimately concluded that nothing in the Act suggests that "information access" is a category of services mutually exclusive with exchange access or telephone exchange service. See id. ¶ 48.

The Commission further determined that ISP-bound traffic is properly classified as "exchange access." See id. ¶ 35. It noted that exchange access refers to "access to telephone exchange services or facilities for the purpose of originating or terminating communications that travel outside an exchange." Id. ¶ 15. Applying this definition, and citing the Reciprocal Compensation Declaratory Ruling, the Commission reasoned that the service provided by the local exchange carrier to an ISP is ordinarily exchange access service, "because it enables the ISP to transport the communication initiated by the end-user subscriber located in one exchange to its ultimate destination in another exchange, using both the services of the local exchange carrier and in the typical case the telephone toll service of the telecommunications carrier responsible for the interexchange transport." Id. ¶ 35. The Advanced Services Remand Order was appealed to the D.C. Circuit. See WorldCom, 2001 WL 395344. The Commission argued to the court in February that the term "information access" is merely "a holdover term from the MFJ, which the 1996 Act supersedes." WorldCom, Inc. v. FCC, Brief for Respondents at 50 (D.C. Cir. No. 00-1002). Its brief also emphasized that section 251(g) was "designed simply to establish a transition from the MFJ's equal access and nondiscrimination provisions ... to the new obligations set out in the statute." Id.

Today, just two months after it made those arguments to the D.C. Circuit, the Commission reverses itself. It now says that section 251(g) exempts certain categories of traffic, including "information access," entirely from the requirements of section 251(b)(5) and that ISP-bound traffic is "information access." See Order ¶¶ 32, 34, 42. The Commission provides nary a \*9219 word to explain this reversal.

Of course, the Commission's conclusions in the Advanced Services Remand Order that ISP-bound traffic is "exchange access" and that the term "information access" has no relevance under the 1996 Act were themselves reversals of earlier Commission positions. In the Non-Accounting Safeguards Order, [FN2] the Commission concluded, relying in part on a purported distinction between "exchange access" and "information access," that ISPs "do not use exchange access as it is defined by the Act." Id. ¶ 248. In that order, the Commission was faced with determining the scope of section 272(e)(2), which states that a Bell operating company ["BOC"] "shall not provide any facilities, services, or information regarding its provision of exchange access to [a BOC affiliate] unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions." 47 U.S.C. § 272(e)(2). The Commission rejected the argument that BOCs are required to provide exchange access to ISPs, reasoning that ISPs do not use exchange access. See Non-Accounting Safeguards Order ¶ 248. In making that decision, the Commission relied on the language of the statute as well as the MFJ's use of the term "information access." See id. ¶ 248 & n. 621. As the Commission explained, its "conclusion that ISPs do not use exchange access is consistent with the MFJ, which recognized a difference between 'exchange access' and 'information access.'" Id. ¶ 248 n.621.

Thus, in reversing itself yet again, the Commission here follows a time-honored tradition. When it is expedient to say that ISPs use "exchange access" and that there is no such thing as "information access," that is what the Commission says. See Advanced Service Remand Order ¶¶ 46-48. When it is convenient to say that ISPs use the local network like local businesses, then the Commission adopts that approach. See Access Charge Reform, First Report and Order, 12 FCC Rcd 15982, ¶ 345 (1997).

And, today, when it helps to write that ISPs use "information access," then that is what the Commission writes. The only conclusion that one can soundly draw from these decisions is that the Commission is willing to make up whatever law it can dream up to suit the situation at hand. Nevertheless, there is one legal proposition that the Commission has, until now, consistently followed - a fact that is particularly noteworthy given the churn in the Commission's other legal principles. The Commission has consistently held that section 251(g) serves only to "preserve[] the LECs' existing equal access obligations, originally imposed by the MFJ." Operator Communications, Inc., D/B/A Oncor Communications, Memorandum Opinion and Order, 14 FCC Rcd 12506, ¶ 2 n.5 (1999). [FN3] Today's order ignores this precedent and \*9220 transforms section 251(g) into a categorical exemption for certain traffic from section 251(b)(5). It is this transformation - much more than the shell game played with "information access" and "exchange access" - that is most offensive in today's decision.

2. The Commission's claim that section 251(g) "excludes several enumerated categories of traffic from the universe of 'telecommunications' referred to in section 251(b)(5)" (Order ¶ 23) stretches the meaning of section 251(g) past the breaking point. Among other things, that provision does not even mention "exclud[ing]," "telecommunications," "section 251(b)(5)," or "reciprocal compensation." Section 251(g), which is entitled, "Continued enforcement of exchange access and interconnection requirements," states in relevant part:

On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996.

47 U.S.C. § 251(g).

As an initial matter, it is plain from reading this language that section 251(g) has absolutely no application to the vast majority of local exchange carriers, including those most affected by today's order. The provision states that "each local exchange carrier ... shall provide [the enumerated services] ... in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations ... that apply to such carrier on the date immediately preceding February 8, 1996." *Id.* (emphasis added). If a carrier was not providing service on February 7, 1996, no restrictions or obligations applied to "such carrier" on that date, and section 251(g) would appear to have no impact on that carrier. The Commission has thus repeatedly stated that section 251(g) applies to "Bell Operating Companies" and is intended to incorporate aspects of the MFJ. Applications For Consent To The Transfer Of Control Of Licenses And Section 214 Authorizations From Telecommunications, Inc., Transferor To AT&T Corp., Transferee., Memorandum Opinion and Order, 14 FCC Rcd 3160, ¶ 53 (1999); see also cases cited *supra* note 3. Accordingly, by its express terms, section 251(g) says nothing about the obligations of most CLECs serving ISPs, which are the primary focus of the Commission's order.

Moreover, it is inconceivable that section 251(g)'s preservation of pre- 1996 Act "equal access and nondiscriminatory interconnection restrictions and obligations" is intended to displace \*9221 section 251(b)(5)'s explicit compensation scheme for local carriers transporting and terminating each other's traffic. Prior to passage of the 1996 Act, there were no rules governing compensation for such services, whether or not an ISP was involved. It seems unlikely, at best, that Congress intended the absence of a compensation scheme to preempt a provision explicitly providing for such compensation. [FN4] At the very least, one would think Congress would use language more explicit than that seized upon by the Commission in section 251(g).

Finally, if, as the Commission maintains, section 251(g) "excludes several enumerated categories of traffic from the universe of 'telecommunications' referred to in section 251(b)(5)" (Order ¶ 23), why

does section 251(g) not also exclude this traffic from the "universe of 'telecommunications'" referred to in the rest of section 251, or, indeed, in the entire 1996 Act? As noted, section 251(g) nowhere mentions "reciprocal compensation" or even "section 251." In fact, there appears to be no limiting principle. It would thus seem that, under the Commission's interpretation, the traffic referred to in section 251(g) is exempt from far more than reciprocal compensation - a consequence the Commission is sure to regret. See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order 11 FCC Rcd 15499, ¶ 356 (1996) (concluding that "exchange access" provided to IXCs is subject to the unbundling requirements of section 251(c)(3)).

\* \* \*

The end result of today's decision is clear. There will be continued litigation over the status of ISP-bound traffic, prolonging the uncertainty that has plagued this issue for years. At the same time, the Commission will be forced to reverse itself yet again, as soon as it dislikes the implication of treating ISP-bound traffic as "information access" or reading section 251(g) as a categorical exemption from other requirements of the 1996 Act. The Commission could, and should, have avoided these consequences by applying its original analysis in the manner sought by the court.

FN1. This aspect of the Advanced Services Remand Order was remanded to the Commission by the D.C. Circuit because of its reliance on the vacated Reciprocal Compensation Declaratory Ruling. See WorldCom, Inc. v. FCC, No. 00-1062, 2001 WL 395344, \*5-\*6 (D.C. Cir. Apr 20, 2001).

FN2. Implementation of the Non-Accounting Safeguards Of Sections 271 and 272 of the Communications Act of 1934, as Amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) ("Non- Accounting Safeguards Order").

FN3. See also, e.g., Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U S West Petitions To Consolidate Latas in Minnesota and Arizona, Memorandum Opinion and Order, 14 FCC Rcd 14392, ¶ 17 (1999) ("In section 251(g), Congress delegated to the Commission sole authority to administer the 'equal access and nondiscriminatory interconnection restrictions and obligations' that applied under the AT&T Consent Decree."); AT&T Corporation, et al., Complainants, Memorandum Opinion and Order, 13 FCC Rcd 21438, ¶ 5 (1998) ("Separately, section 251(g) requires the BOCs, both pre- and post-entry, to treat all interexchange carriers in accordance with their preexisting equal access and nondiscrimination obligations, and thereby neutralize the potential anticompetitive impact they could have on the long distance market until such time as the Commission finds it reasonable to revise or eliminate those obligations.").

FN4. The case of IXC traffic is thus completely different. There was a compensation scheme in effect for such traffic prior to enactment of the 1996 Act - the access charge regime. Because reciprocal compensation and the access charge regime could not both apply to the same traffic, the Commission could reasonably conclude that the access charge regime should trump the reciprocal compensation provision of section 251(b)(5). See Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068, 1072-73 (8th Cir. 1997). Here, there is no pre-1996 Act compensation scheme to conflict with reciprocal compensation. As the Commission has stated, "the Commission has never applied either the ESP exemption or its rules regarding the joint provision of access to the situation where two carriers collaborate to deliver traffic to an ISP." Reciprocal Compensation Declaratory Ruling ¶ 26. 2001 WL 455869 (F.C.C.), 16 F.C.C.R. 9151, 16 FCC Rcd. 9151  
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# EXHIBIT S-22

# EXHIBIT S-23

# EXHIBIT S-24

# EXHIBIT S-25

# EXHIBIT S-26

# EXHIBIT S-27

Arizona  
RT-00000F-02-0271  
STF 06-006S1-Correction

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 006S1-Correction

In Exhibit LBB-1 of the direct testimony of Larry B. Brotherson Qwest states that the Letter from Qwest Regarding Daily Usage Information dated 11/15/00 was terminated by the Settlement Agreement dated March 1, 2002, and the completion of the transfer to a mechanized process. When was the transfer to a mechanized process completed?

RESPONSE:

Eschelon began using the mechanized Daily Usage Information process in November 2001.

Respondent: Legal and Arturo Ibarra

SUPPLEMENTAL RESPONSE DATED 01/24/03:

Qwest began operating the mechanized Daily Usage Information process on November 8, 2001. Qwest and Eschelon continued using the manual process, in parallel with the mechanized process, through April usage, which was billed on May 21, 2001.

Respondent: Legal and Arturo Ibarra

CORRECTION DATED 01/27/03:

Qwest began operating the mechanized Daily Usage Information process on November 8, 2001. Qwest and Eschelon continued using the manual process, in parallel with the mechanized process, through April usage, which was billed on May 21, 2002.

Respondent: Legal and Arturo Ibarra

# EXHIBIT S-28

# EXHIBIT S-29

# EXHIBIT S-30

# EXHIBIT S-31

# EXHIBIT S-32

# EXHIBIT S-33

# EXHIBIT S-34

New Mexico  
Utility Case No. 3750  
Staff 04-061

INTERVENOR: New Mexico Public Regulation Commission (Staff)

REQUEST NO: 061

State why Qwest did not produce thus far in this investigation the October 26, 2000 Purchase Agreement between Qwest and McLeod whereby McLeod agrees \*\* confidential [to purchase \$480 million worth of "Products" from Qwest.] \*\* end confidential.

RESPONSE:

Qwest discovered that it had inadvertently omitted the subject agreement from the Unfiled Agreements List and the documents filed on April 2, 2002 in response to the Commission's March 19 order. On May 9, 2002, Qwest filed a supplemental response correcting the oversight.

# EXHIBIT S-35

# EXHIBIT S-36

# EXHIBIT S-37

# EXHIBIT S-38

# EXHIBIT S-39

# EXHIBIT S-40

# EXHIBIT S-41

# EXHIBIT S-42

# EXHIBIT S-43

# EXHIBIT S-44

# EXHIBIT S-45

# EXHIBIT S-46

# EXHIBIT S-47

# EXHIBIT S-48

# EXHIBIT S-49

# EXHIBIT S-50

# EXHIBIT S-51

# EXHIBIT S-52

Arizona  
RT-00000F-02-0271  
STF 12-001

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 001

Indicate whether the Confidential Billing Settlement Agreement with Qwest and Paging Network (Exhibit F #89) dated 4/23/01 has been canceled, terminated, superseded, or has expired.

RESPONSE:

Because PageNet was subsumed by Arch Communications, and the Arch Communications Interconnection Agreement is the operative agreement for the combined companies, this agreement contains no going-forward terms that are in effect and is superseded and terminated.

Respondent: Legal

# EXHIBIT S-53

# EXHIBIT S-54

# EXHIBIT S-55

# EXHIBIT S-56

# EXHIBIT S-57

**Coordinated Installation With No Testing Amendment  
to the Interconnection Agreement between  
Qwest Corporation and  
Allegiance Telecom of Arizona, Inc.  
for the State of Arizona**

This is an Amendment ("Amendment") to the Interconnection Agreement between Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., a Colorado corporation, and Allegiance Telecom of Arizona, Inc. ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties".

**RECITALS**

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement ("Agreement") for service in the state of Arizona which was approved by the Arizona Corporation Commission ("Commission"); and

WHEREAS, the Parties wish to amend the Agreement further under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Amendment Terms**

The Agreement is hereby amended by adding terms, conditions and rates for Coordinated Installation With No Testing as set forth in Attachment 1.

**Effective Date**

This Amendment shall be deemed effective immediately and the rates established herein shall apply prospectively and there will be no retroactive true-up. If the final rates approved by the Commission are different from the rates in this amendment, they will apply prospectively only and there will be no retroactive true up.

**Further Amendments**

Except as modified herein, the provisions of the Agreement shall remain in full force and effect. Neither the Agreement nor this Amendment may be further amended or altered except by written instrument executed by an authorized representative of both Parties.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Allegiance Telecom of Arizona, Inc.

Mary C. Albert  
Signature

MARY C. ALBERT  
Name Printed/Typed

Vice President Regulatory & Telecommunications  
Title

1/3/02  
Date

Qwest Corporation

L. T. Christensen  
Signature

L. T. Christensen  
Name Printed/Typed

Director - Business Policy  
Title

1/7/02  
Date



ATTACHMENT 1

Qwest will offer coordinated installation of DS-0 unbundled loops with no testing for a price of \$60 per loop for a minimum of 4 loops per customer location per order.

# EXHIBIT S-58

**Staff's First Set of Data Requests to Allegiance Telecom, Inc.  
DOCKET NO. RT-00000F-02-0271  
Response of Allegiance Telecom, Inc.**

*STAFF -1:3 Have any interconnection agreements or amendments to interconnection agreements, or portions thereof, not been filed with the ACC for approval? If not, explain why.*

Response: Yes. A "Coordinated Installation With No Testing" Amendment to the Qwest Corporation/Allegiance Telecom of Arizona, Inc. Interconnection Agreement, fully executed as of January 7, 2002, has not been filed with the ACC for approval. In connection with responding to this data request, and in response to Allegiance's inquiry, Qwest indicated to Allegiance that it did not file this Amendment for ACC approval due to inadvertence. Allegiance understands that Qwest will promptly file the Amendment for approval.

Response by:

Mary C. Albert  
Vice President, Regulatory and Interconnection  
Allegiance Telecom, Inc.  
1919 M Street, NW  
Suite 420  
Washington, DC 20036

Dated: June 6, 2002

# EXHIBIT S-59

OPERATOR SERVICES AGREEMENT  
Arizona

This Operator Services Agreement ("Agreement") is made and entered into by and between Qwest Corporation ("Qwest"), a Colorado corporation, and Allegiance Telecom of Arizona, Inc. ("CLEC"). This Agreement may refer to CLEC or to Qwest as a Party ("Party") to this Agreement. The Operator Services provided in this Agreement (the "Services") will be delivered in the State of Arizona.

WHEREAS, CLEC desires to purchase and Qwest desires to provide the Services as described and set forth in this Agreement.

NOW THEREFORE, in consideration of the promises, mutual covenant, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. SCOPE OF AGREEMENT**

1.1 This Agreement sets forth the terms and conditions for the provision of the Services by Qwest to CLEC. The Services will be provided by live operators or computers and include the following:

1.1.1 Local Assistance - Provide assistance to CLEC's end user requesting help or information on placing or completing local calls, connecting to home NPA directory assistance, and provide such other information and guidance, including referral to business office and repair numbers, as may be consistent with Qwest's customary practice for providing customer assistance.

1.1.1.1 Emergency Assistance - Provide assistance for handling the emergency local and intraLATA toll calls to emergency agencies of CLEC's end user, including, but not limited to, police, sheriff, highway patrol and fire. CLEC will be responsible for providing Qwest with the appropriate emergency agencies numbers and updates.

1.1.1.2 Busy Line Verify ("BLV") - Performed when CLEC's end user requests assistance from the operator to determine if the called line is in use. The operator will not complete the call for the end user initiating the BLV inquiry. Only one BLV attempt will be made per end user call, and a charge will apply.

1.1.1.3 Busy Line Interrupt ("BLI") - Performed when CLEC's end user requests assistance from the operator to interrupt a telephone call in progress after BLV has occurred. The operator will interrupt the busy line and inform the called party that there is a call waiting. The operator will only interrupt the busy line and will not connect CLEC's end user and the called party. The operator will make only one BLI attempt per end user call and the applicable charge applies whether or not the called party releases the line.

1.1.1.4 Quote Service - Provide time and charges to hotel/motel and other end users of CLEC for guest/account identification.

1.1.1.5 Coin Refund Requests - Provide information regarding CLEC's end users requesting coin refunds

1.1.2 IntraLATA Toll Assistance - Qwest will direct CLEC's end user to contact their carrier to complete intraLATA toll calls.

1.1.3 Branding - Announces CLEC's name at the introduction and conclusion of the call, where technically feasible. Qwest will record the Brand.

1.2. If this Agreement arises out of an interconnection agreement between the Parties ("Interconnection Agreement"), then this Agreement will be interpreted consistent with that Interconnection Agreement and the relationship of the Parties described therein. Further, the expiration or termination of the Interconnection Agreement, unless otherwise agreed in writing by the Parties, will also end this Agreement.

**2. TERMS AND CONDITIONS**

2.1 CLEC elects to receive the following Operator Services:

- Local Assistance
- Emergency Assistance
- Busy Line Verify
- Busy Line Interrupt
- Quote Service
- Coin Refund Requests
- IntraLATA Toll Assistance
- Branding

2.2 Interconnection to Qwest Services from an end office to Qwest is technically feasible at two distinct points on the trunk side of the switch. The first connection point is an operator services trunk connected directly to Qwest's Operator Services host switch. The second connection point is an operator services trunk connected directly to a remote Qwest Operator Services switch.

2.3 Trunk provisioning and facility ownership will follow the guidelines recommended by the Trunking and Routing, IOF and Switch sub-teams. All trunk interconnections will be digital.

2.4 Operator Services interconnection will require a dedicated operator services type trunk, per NPA, between the end office and the interconnection point on Qwest's switch. Subject to availability and capacity, access may be provided via operator services trunks purchased from Qwest or provided by CLEC via collocation arrangements to route calls to CLEC's platform.

2.5 The technical requirements of operator services type trunks and the circuits to connect the positions to the host are covered in the Operator Services Systems Generic Requirement (OSSGR), Bellcore Document No. FR-NWT-000271, Section 6 (Signaling) and Section 10 (System Interfaces) in general requirements form.

2.6 CLEC will provide separate (not the local/intraLATA trunks) no-test trunks to Qwest's BLV-BLI validation hubs or to Qwest's operator services switches.

2.7 Qwest will perform Services provided under this Agreement in accordance with operating methods, practices, and standards in effect for all its end users. Nothing in

this Agreement is intended to obligate Qwest to provide any toll services to CLEC or CLEC's end users.

- 2.8 It is understood that Qwest will have no obligation to supply a Service where facilities or technical abilities are limited. Qwest, in its reasonable discretion, may modify and change the nature, extent and detail of the Services from time to time during the term hereof.
- 2.9 CLEC will complete the "Qwest Operator Services/Directory Assistance Questionnaire for Local Service Providers" to request Services, and CLEC represents that the information is true and correct to the best of its knowledge and belief.
- 2.10 Qwest will maintain adequate equipment and personnel to reasonably perform the Services. CLEC will provide and maintain the facilities necessary to connect its end users to the place(s) where Qwest provides the Services and to provide all information and data needed or reasonably requested by Qwest in order to perform the Services.

### 3. TERM AND TERMINATION

This Agreement arises out of an Interconnection Agreement between the Parties, that was approved by the Arizona Corporation Commission ("Commission"). This Agreement will become effective upon the latest signature date, and will terminate at the same time as the said Interconnection Agreement.

### 4. CHARGES

The charges for the Services provided by Qwest under this Agreement are listed in Exhibit A, attached hereto and incorporated herein by reference.

### 5. BILLING

- 5.1. Qwest will track usage and bill CLEC, and CLEC will pay Qwest for the calls placed by CLEC's end users and facilities.
- 5.2 Usage will be calculated according to Option A (Price Per Message) and Option B (Price Per Work Second and Computer Handled Calls), as defined in Exhibit A, and Qwest will charge CLEC whichever is lower.
- 5.3 If, due to equipment malfunction or other error, Qwest does not have available the necessary information to compile an accurate billing statement, Qwest may render a reasonably estimated statement, but will notify CLEC of the methods of such estimate and cooperate in good faith with CLEC to establish a fair, equitable estimate. Qwest will render a statement reflecting actual billable quantities when and if the information necessary for the billing statement becomes available.
- 5.4 CLEC alone and independently establishes all prices it charges its end users for Services provided by means of this Agreement, and Qwest is not liable or responsible for the collection of any such amounts.
- 5.5 If Branding is selected, a non-recurring charge for studio set-up and recording will apply. The non-recurring studio/recording charge will be assessed each time the brand message is changed. The non-recurring charge to load the switches will be assessed each time there is any type of change to the switch. (CLECs offering service in more

than one state will be assessed a one time only non-recurring charge for studio set-up and recording.) The non-recurring charge(s) must be paid prior to commencement of service.

## 6. PAYMENT

- 6.1 Amounts payable under this Agreement are due and payable within thirty (30) days after the date of statement.
- 6.2 Unless prohibited by law, any amount due and not paid by the due date stated above will be subject to a late charge equal to either i) 0.03 percent per day compounded daily for the number of calendar days from the payment due date to and including, the date of payment, that would result in an annual percentage rate of 12% or ii) the highest lawful rate, whichever is less.
- 6.3 Should CLEC dispute any portion of the statement under this Agreement, CLEC will notify Qwest in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. CLEC will pay all amounts due. Both CLEC and Qwest agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies.

## 7. CONFIDENTIAL INFORMATION

- 7.1 "Confidential Information" means all documentation and technical and business information, whether oral, written or visual, which is legally entitled to be protected from disclosure, which a Party to this Agreement may furnish to the other Party or has furnished in contemplation of this Agreement to such other Party. Each Party agrees (1) to treat all such Confidential Information strictly as confidential and (2) to use such Confidential Information only for purposes of performance under this Agreement or for related purposes.
- 7.2 The Parties shall not disclose Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of an obligation to, or in connection with any proceeding before any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court. The Parties' obligations under this Section shall continue for one (1) year following termination or expiration of this Agreement.

## 8. FORCE MAJEURE

With the exception of payment of charges due under this Agreement, a Party shall be excused from performance if its performance is prevented by acts or events beyond the Party's reasonable control, including but not limited to, severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; computer failures; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities.

## 9. LIMITATION OF LIABILITY

QWEST SHALL BE LIABLE TO CLEC, AND CLEC ONLY, FOR THE ACTS OR OMISSIONS OF QWEST, EXPRESSLY INCLUDING THE NEGLIGENT ACTS OR OMISSIONS OF QWEST OR THOSE ATTRIBUTABLE TO QWEST, IN CONNECTION

WITH QWEST'S SUPPLYING OR CLEC'S USING THE SERVICES, BUT STRICTLY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THIS AGREEMENT. IT IS EXPRESSLY AGREED THAT QWEST'S LIABILITY TO CLEC, AND CLEC'S SOLE AND ONLY REMEDY FOR ANY DAMAGES ARISING IN CONNECTION WITH THE SERVICES AND THIS AGREEMENT SHALL BE A REFUND TO CLEC OF THE AMOUNT OF THE CHARGES BILLED AND PAID BY CLEC TO QWEST FOR FAILED OR DEFECTIVE SERVICES. UNDER NO CIRCUMSTANCES OR THEORY, WHETHER BREACH OF AGREEMENT, PRODUCT LIABILITY, TORT, OR OTHERWISE, SHALL QWEST BE LIABLE FOR LOSS OF REVENUE, LOSS OF PROFIT, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES OR INCIDENTAL DAMAGES, AND ANY CLAIM FOR DIRECT DAMAGES SHALL BE LIMITED AS SET FORTH ABOVE. UNDER NO CIRCUMSTANCES SHALL QWEST EVER BE LIABLE TO CLEC'S END USERS FOR ANY DAMAGES WHATSOEVER.

#### 10. INDEMNIFICATION

Each Party to this Agreement hereby indemnifies and holds harmless the other Party with respect to any third-party claims, lawsuits, damages or court actions arising from performance under this Agreement to the extent that the indemnifying Party is liable or responsible for said third-party claims, losses, damages, or court actions. Further, CLEC hereby indemnifies Qwest from any claims made against it by CLEC's end user's due to CLEC's end user's use or attempted use of the Service, regardless of the cause thereof excepting only, the intentional, malicious misconduct of Qwest. Whenever any claim shall arise for indemnification hereunder, the Party entitled to indemnification shall promptly notify the other Party of the claim and, when known, the facts constituting the basis for such claim. In the event that one Party to this Agreement disputes the other Party's right to indemnification hereunder, the Party disputing indemnification shall promptly notify the other Party of the factual basis for disputing indemnification. Indemnification shall include, but is not limited to, costs and attorney fees.

#### 11. LAWFULNESS OF AGREEMENT

- 11.1. This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. This Agreement shall only be effective when mandatory regulatory filing requirements are met, if applicable. If a court or a governmental agency with proper jurisdiction determines that this Agreement, or a provision of this Agreement, is unlawful, this Agreement, or that provision of this Agreement shall terminate on written notice to CLEC to that effect.
- 11.2. If a provision of this Agreement is so terminated, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may terminate this Agreement.

#### 12. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the state in which Services are delivered to the end user.

#### 13. DISPUTE RESOLUTION

Upon mutual agreement of the Parties, any claim, controversy or dispute between the Parties that cannot be settled through negotiations may be resolved by binding

arbitration in accordance with the Federal Arbitration Act, 9 U.S.C. 1-16, not state law. The arbitration shall be conducted by a retired judge or a practicing attorney under the rules of the American Arbitration Association. The arbitration shall be conducted in a mutually agreed upon City in Arizona. The arbitrator's decision shall be final and may be entered in any court with jurisdiction. Each Party shall be responsible for its own costs.

14. **DEFAULT**

If a Party defaults in the performance of any substantial obligation herein, and such default continues, uncured and uncorrected, for thirty (30) days after written notice to cure or correct such default, then the non-defaulting Party may immediately terminate this Agreement. Subject to Section 9 (Limitation of Liability) above, the non-defaulting Party may also pursue other permitted remedies by arbitration as set forth above.

15. **SUCCESSORS, ASSIGNMENT**

Neither Party shall assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that Qwest or CLEC may assign and transfer this Agreement to any parent, subsidiary, successor, affiliated company or other affiliated business entity without the prior written consent of the other Party.

16. **AMENDMENTS TO AGREEMENT**

The Parties may by mutual agreement and execution of a written amendment to this Agreement amend, modify, or add to the provisions of this Agreement.

17. **NOTICES**

Any notice to be given pursuant to this Agreement by either Party to the other shall be in writing and shall be deemed given when sent either by mail to the address listed below or by facsimile with a confirmation copy sent by mail.

**CLEC**  
Mary Albert  
Vice President – Regulatory and  
Interconnection  
1919 M St. NW, Suite 420  
Washington D.C. 20036  
202-464-1796  
[Mary.albert@algx.com](mailto:Mary.albert@algx.com)

**Qwest Corporation**  
Elizabeth Stamp  
Qwest Sales Executive  
  
1801 California Street, Suite 2430  
Denver, CO 80202-1984  
303-896-7146  
[ezatkow@qwest.com](mailto:ezatkow@qwest.com)

18. **ENTIRE AGREEMENT**

This Agreement, together with any jointly-executed written amendments, constitutes the entire agreement and the complete understanding between the Parties. No other verbal or written representation of any kind affects the rights or the obligations of the Parties regarding any of the provisions in this Agreement.

19. PUBLICITY

Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Nothing in this section shall limit a Party's ability to issue public statements with respect to regulatory or judicial proceedings.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed for and on its behalf on the day and year indicated below:

Allegiance Telecom of Arizona, Inc.

Mary C. Albert

Signature

MARY C. ALBERT

Name Printed/Typed

Vice President, Regulatory & Telecommunications

Title

6/17/02

Date

Qwest Corporation

L. T. Christensen

Signature

L. T. Christensen

Name Printed/Typed

Director - Business Policy

Title

6/19/02

Date

Exhibit A  
Arizona\*

New				
			Recurring	Non- Recurring
Notes				
10.0 Ancillary Services				
10.6 Toll and Assistance Operator Services, Facility Based Providers,				
10.6.1 Option A - Per Message				
	Operator Handled Calling Card		\$1.45	10
	Machine Handled Calling Card		\$0.60	10
	Station Call		\$1.50	10
	Person Call		\$3.50	10
	Connect to Directory Assistance		\$0.75	10
	Busy Line Verify, per Call		\$0.72	
	Busy Line Interrupt		\$0.87	
	Operator Assistance, per Call		\$0.87	10
10.6.2 Option B - Per Operator Work Second and Computer Handled Calls				
	Operator Handled, per Operator Work Second		\$0.181	10
	Machine Handled, per Call		\$0.25	10
	Call Branding, Set-Up & Recording			\$10,500.00
	Loading Brand/Per Switch			\$175.00

NOTES:

\* Unless otherwise indicated, all rates are pursuant to Arizona Corporation Commission Order Number 60635 in Cost Docket (Consolidated Arbitration) Number U-3021-96-448, effective January 30, 1998.

[10] Market-based rates.

# EXHIBIT S-60

1

Interim Amendment to the Interconnection Agreements  
Between

AT&T Corp., AT&T Communications of the Mountain States, Inc., AT&T  
Communications of the Midwest, Inc., AT&T Communications of the Pacific  
Northwest, Inc., Teleport Communications Group, Inc.  
MediaOne Telecommunications Corp of Minnesota

and

Qwest Corporation

(formerly doing business as U S WEST Communications, Inc.)

This Interim Amendment ("Interim Amendment") is made and entered into by and between AT&T Corp., AT&T Communications of the Mountain States, Inc., AT&T Communications of the Midwest, Inc., AT&T Communications of the Pacific Northwest, Inc., Teleport Communications Group, Inc. and MediaOne Telecommunications Corp of Minnesota ("AT&T") and Qwest Corporation (formerly doing business as U S WEST Communications, Inc.) ("Qwest").

RECITALS

WHEREAS, AT&T and Qwest entered into Interconnection Agreements for service in the fourteen state Qwest operating territory that was executed by AT&T on various dates and Qwest on various dates (the "Agreements"); and

WHEREAS, AT&T and Qwest desire to amend these Agreements under terms and conditions contained herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Interim Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Interim Amendment Terms.

The Parties have agreed to this Interim Amendment for all current AT&T Agreements. Due to the shortness of time, the Parties are unable to execute, in a timely manner, the actual amendments for each AT&T Agreement. The Parties will operate under this Interim Amendment until the actual amendments are executed and approved by the appropriate state commissions. The Parties agree to execute the actual amendments no later than August 1, 2001.

This Interim Amendment is made in order to add the terms, conditions to enable AT&T to receive blocking reports on all interoffice trunk groups carrying EAS/local traffic between Qwest tandem switches and Qwest end office switches.

2. Effective Date.

This Interim Amendment shall be deemed effective upon execution by both Parties.

3. Further Amendments.

Except as modified herein, the provisions of the Agreements shall remain in full force and effect. Neither the Agreements nor this Interim Amendment may be further amended or altered except by written instrument executed by an authorized representative of both Parties.

4. No Waiver.

All Parties enter into this Interim Amendment without prejudice to or waiver of any of its rights to challenge the terms and conditions of this Interim Amendment under the Agreement, the Act, FCC or state commission rules, ROC determinations or recommendations or any applicable law.

The Parties intending to be legally bound have executed this Interim Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

AT&T

  
Authorized Signature

Timothy D. Boykin  
Name Printed/Typed

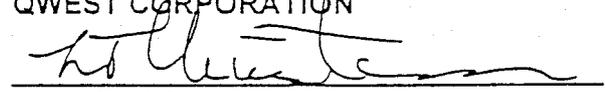
District Manager - Local Services and  
Access Management

Title

Date June 11, 2001

Date

QWEST CORPORATION

  
Authorized Signature

L. T. Christensen  
Name Printed/Typed

Director - Business Policy

Title

Date 6/22/01

Date

ATTACHMENT  
Blocking Reports

Add in the trunking section of the contract, as follows:

Qwest shall provide to CLEC monthly reports on all interconnection trunk groups and quarterly reports on all interoffice trunk groups carrying EAS/local traffic between Qwest tandem switches and Qwest end office switches. The reports will contain busy hour traffic data, including but not limited to, overflow and the number of trunks in each trunk group.

S 023974

# EXHIBIT S-61

**EXHIBIT S-62**

Arizona  
RT-00000F-02-0271  
STF 08-003

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 003

Indicate whether paragraph 11 of the Confidential Settlement Agreement with Qwest and Scindo dated 1/10/01 (#82 on Exhibit F) applied to Arizona.

RESPONSE:

The Confidential Settlement Agreement with Qwest and Scindo to which Qwest believes that Staff refers is dated 8/10/01 and not 1/10/01. The ongoing services referenced in this agreement, including paragraph 11, pertain to facilities in Colorado, and not Arizona. The only reference to Arizona is found in paragraph 8, which states an intention to opt into the then current SGAT for any state in which Scindo wishes to enter into an interconnection agreement. Scindo went out of business before it determined whether to opt into the SGAT for Arizona. Thus, Qwest believes that paragraph 8's expression of an intention to potentially opt into an agreement in the future is not a provision within Section 252(e). Further, Scindo never entered into any interconnection agreement for Arizona, and Scindo never conducted business in Arizona to Qwest's knowledge.

For these reasons, Qwest believes that the subject agreement, and paragraph 11 in particular, is not applicable to Arizona or to any filing requirement under Section 252(e) in Arizona.

Respondent: Legal

# EXHIBIT S-63

# EXHIBIT S-64

# EXHIBIT S-65

# EXHIBIT S-66

Arizona  
RT-00000F-02-0271  
STF 13-001

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 001

Has the internal committee which was formed in May 2002 to review interconnection agreements reviewed the entire list of agreements that appeared in Exhibit F of Staff's Supplemental Staff report dated August 14, 2002?

RESPONSE:

The internal committee was formed in May and June of 2002. Its purpose is to review agreements executed after the formation of the committee and to ensure future compliance with the Section 252 filing requirement. It is not the purpose of the committee to review or consider past agreements that are being litigated in Arizona or any other state. Thus, the past agreements listed in Exhibit F have not been reviewed or considered by the committee. The filing treatment of two agreements that were executed close to the committee's formation, those listed as numbers 15 and 40, were noted by the committee.

Respondent: Legal

# EXHIBIT S-67

RECEIVED

LAW OFFICES

**FENNEMORE CRAIG**

A PROFESSIONAL CORPORATION

2002 SEP -9 P 3:33

DARCY R. RENFRO

AZ CORP COMMISSION

Direct (602) 916-5345

Direct Fax: (602) 916-5345

drenfro@fclaw.com

OFFICES IN:

PHOENIX, TUCSON,

NOGALES, AZ; LINCOLN, NE

3003 NORTH CENTRAL AVENUE

SUITE 2600

PHOENIX, ARIZONA 85012-2913

PHONE: (602) 916-5000

FAX: (602) 916-5999

September 9, 2002

**BY HAND DELIVERY**

Docket Control!

Arizona Corporation Commission

1200 West Washington

Phoenix, Arizona 85007

Re: In the Matter of the Application of Qwest Corporation for Approval of the Facility Decommissioning Reimbursement Agreement as an Amendment to the Interconnection Agreement with AT&T Corporation

Dear Madam or Sir:

Pursuant to Section 252(e)(2) of the Telecommunications Act of 1996, Qwest Corporation ("Qwest") hereby submits the enclosed negotiated Facility Decommissioning Reimbursement Agreement between Qwest Corporation ("Qwest") and AT&T Corporation ("AT&T") as an Amendment for filing with and approval by the Arizona Corporation Commission ("Commission"). The Commission approved the underlying Interconnection Agreement between Qwest and AT&T on July 31, 1997 in Docket No. U-2428-96-417, Decision No. 60308.

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 April 9, 2002. Pursuant to a Procedural Order within that Docket, Qwest submitted 79

# FENNEMORE CRAIG

Docket Control  
September 9, 2002  
Page 2

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 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.

# FENNEMORE CRAIG

Docket Control  
September 9, 2002  
Page 3

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).<sup>1/</sup> (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 CLECs to request terms and conditions, subject to the Commission's decision approving the agreements filed here.

---

<sup>1/</sup> 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).

# FENNEMORE CRAIG

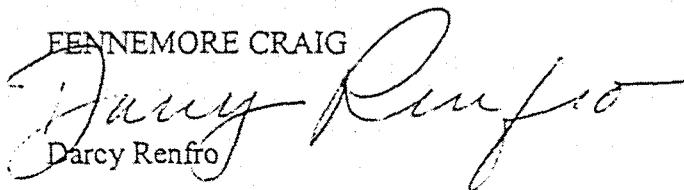
Docket Control  
September 9, 2002  
Page 4

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 these dockets. 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: Michael Hydock, AT&T  
Mitchell H. Menezes, AT&T  
Richard S. Wolters, AT&T  
Ernest G. Johnson, Director, ACC Utilities Division  
Chris Kempley, Chief Counsel, ACC Hearing Division

# EXHIBIT S-68

3033 North Third Street, Suite 1010  
Phoenix, Arizona 85012  
Office 602-630-8255  
Fax 602-235-3107

Monica Luckritz  
Manager - Policy and Law



November 22, 2002

Maureen Scott, Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Dear Ms. Scott:

Re: Qwest Corporation  
Docket No. T-00000F-02-0271

Enclosed, please find Qwest Corporation's response to STF 02-001 in Staff's second set of data requests.

If you have questions, please contact me.

Very truly yours,

*Monica Luckritz*  
(gm)

Enclosures

Arizona  
RT-00000F-02-0271  
STF 02-001

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 001

Please state which of the unfiled agreements submitted into the record in this proceeding, have since been canceled, terminated, superseded, or have expired. Your response should include all oral and written agreements and settlement agreements subsequently filed with the Commission. Please provide a list of the agreements and the date canceled, terminated, superseded or date of expiration. If any agreements were canceled, terminated, or superseded prior to their natural expiration date, please discuss in detail why such agreements were canceled, terminated, or superseded.

RESPONSE:

For the 28 agreements identified by Staff to be at issue in this case, the attached Confidential chart shows which of those agreements, or provisions thereof, have been terminated, superseded or have expired. The attached chart addresses those agreements or provisions that the Staff has identified as raising section 251 concerns [or that Qwest considers to have raised 251 concerns]. The attached chart does not address provisions that do not address section 251 services or which are "boiler plate" provisions.

Respondent: Legal

*Marta*

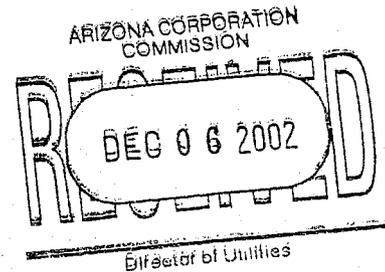
3033 North Third Street, Room 1010  
Phoenix, Arizona 85012  
Office 602-630-8255  
Fax 602-235-3107

Monica Luckritz  
Manager - Policy and Law



December 6, 2002

Maureen A. Scott, Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007



Dear Ms. Scott:

RE: Qwest Communications Corporation  
Docket No. RT-00000F-02-0271

Dear Ms. Scott:

Enclosed are Qwest Corporation's responses to STF 003-001, -002, -003, -004, -005, -006, -007, -008 and -009 in Staff's second set of data requests in the above referenced docket.

If you have questions, please contact me.

Very truly yours,

*Monica Luckritz*

Enclosures

CC: Constance Fitzsimmons  
Wilfred Shand  
Linda Jaress

Arizona  
RT-00000F-02-0271  
STF 03-007

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 007

Indicate which of the unfiled agreements submitted into the record in this proceeding, have since been canceled, terminated, superseded, or have expired. This includes, but is not limited to, all the agreements listed in Exhibit F of Staff's Supplemental Report dated August 14, 2002. This also includes the following agreements: Purchase Agreement with McLeod in which McLeod commits to purchasing services from Qwest dated October 26, 2000; Coordinated Installation With No Testing Amendment with Allegiance dated January 7, 2002; and Confidential Billing Settlement Agreement with XO regarding network services dated December 31, 2001. Provide a list of the agreements and the date canceled, terminated, superseded or date of expiration. If any agreements were canceled, terminated, or superseded prior to their natural expiration date, please discuss in detail why such agreements were canceled, terminated, or superseded.

RESPONSE:

Qwest objects to this request on the grounds that it is overlybroad, unduly burdensome and unlikely to lead to the discovery of admissible evidence, because whether an agreement, that the Staff has concluded need not be filed under Section 252, has been terminated or superseded is irrelevant to the issues regarding agreements that the Staff believes should have been filed under Section 252. Subject to and without waiving these objections, Qwest has, in the testimony submitted on December 6, 2002, addressed the terminated and superseded agreements as to each of the agreements listed in Exhibit G to the Staff report dated August 14, which lists the agreements that Staff believes should have been filed .

Respondent: Legal

**From:** Marta Kalleberg  
**To:** tberg@fclaw.com  
**Date:** 12/26/02 8:17AM  
**Subject:** Staff's 3rd set of DRs, #3-7

Tim,

Gary is out the rest of this week so please send any responses to the questions we had earlier this week to Gary and myself.

Also, attached is the list of specific documents for Qwest to review in order to fully respond to Staff 3-7. Upon review of the list, please let me know when Qwest will be able to provide its response to 3-7.

Thank you,

**CC:** Gary Horton

STAFF 3-7 (specific agreements)

Exhibit F No.	Company	Agreement
2	Eschelon	Trial Agreement with Qwest dated 7/21/00
3	Eschelon	Confidential Agreement Letter with Qwest dated 11/15/00
5	Eschelon	Conf. Letter Agreement On Status of Switched Access Minute Reporting with Qwest dated 7/3/01
11	Eschelon	Feature Letter from Qwest dated 11/15/00
13	Eschelon (ATI)	Conf. 2nd Amendment with Qwest to Conf./Trade Secret Stipulation dated 3/19/01
19	McLeodUSA	Confidential Agreement Letter (escalation procedures) with Qwest dated 10/26/00
25	McLeodUSA	Conf. Agreement to Provide Directory Assistance Database Entry Services with Qwest dated 2/12/01
26	McLeodUSA	Confidential Billing Settlement Agreement with Qwest dated 9/29/00
28	McLeodUSA	Confidential Billing Settlement Agreement with US WEST dated 4/28/00
36	Electric Lightwave	Confidential Settlement Agreement and Release with U S WEST dated 6/16/99
38	Electric Lightwave	Binding Letter Agreement with Qwest dated 7/19/01
47	WorldCom	Business Escalation Agreement with Qwest dated 6/29/01
Not on F, given by Allegiance in DR response	Allegiance	Coordinated Installation With No Testing Amendment with Qwest dated 1/7/02
56	XO (subs)	Confidential Billing Settlement Agreement with Qwest dated 12/31/01
57	XO	Take or Pay Agreement with Qwest dated 12/31/01
67	SBC	Letter from US WEST Regarding Proposed Settlement Terms dated 6/1/00
68	SBC & NAS	Conf. Consent to Assignment & Collocation Change of Responsibility Agreement with Qwest dated 6/1/01
70	e-spire	Confidential Billing Settlement Agreement with Qwest dated 6/20/01
81	Scindo Networks	Confidential Settlement Agreement with Qwest dated 5/4/01
82	Scindo Networks	Confidential Settlement Agreement with Qwest dated 8/10/01
84	Ernest Comm.	Confidential Settlement Agreement and Release with Qwest dated 9/17/01
91	Arch Comm.	Confidential Billing Settlement Agreement with US WEST dated 6/16/00

RECEIVED

JAN - 7 2003

3033 North Third Street, Suite 1010  
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Office 602-630-8255  
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Monica Luckritz  
Manager - Policy and Law

LEGAL DIV.  
ARIZ. CORPORATION COMMISSION



January 6, 2003

Maureen Scott, Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

~~Scott~~  
Horton  
Jmical

Dear Ms. Scott:

Re: Qwest Corporation  
Docket No. T-00000F-02-0271

Enclosed, please find Qwest Corporation's supplemental responses to STF 03-004S1, -005S1, -006S1, -007S1 and -008S1 in Staff's third set of data requests in the above referenced docket.

If you have questions, please contact me.

Very truly yours,

*Monica Luckritz*  
(gm)

Enclosures

Arizona  
RT-00000F-02-0271  
STF 03-007S1

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 007S1

Indicate which of the unfiled agreements' submitted into the record in this proceeding, have since been canceled, terminated, superseded, or have expired. This includes, but is not limited to, all the agreements listed in Exhibit F of Staff's Supplemental Report dated August 14, 2002. This also includes the following agreements: Purchase Agreement with McLeod in which McLeod commits to purchasing services from Qwest dated October 26, 2000; Coordinated Installation With No Testing Amendment with Allegiance dated January 7, 2002; and Confidential Billing Settlement Agreement with XO regarding network services dated December 31, 2001. Provide a list of the agreements and the date canceled, terminated, superseded or date of expiration. If any agreements were canceled, terminated, or superseded prior to their natural expiration date, please discuss in detail why such agreements were canceled, terminated, or superseded.

RESPONSE:

Qwest objects to this request on the grounds that it is overlybroad, unduly burdensome and unlikely to lead to the discovery of admissible evidence, because whether an agreement, that the Staff has concluded need not be filed under Section 252, has been terminated or superseded is irrelevant to the issues regarding agreements that the Staff believes should have been filed under Section 252. Subject to and without waiving these objections, Qwest has, in the testimony submitted on December 6, 2002, addressed the terminated and superseded agreements as to each of the agreements listed in Exhibit G to the Staff report dated August 14, which lists the agreements that Staff believes should have been filed.

Respondent: Legal

SUPPLEMENTAL RESPONSE DATED 1/06/03:

Qwest provides the following supplemental information in response to Staff's narrowing of its data request to the following documents as listed in Staff's Exhibit G:

2. Eschelon Trial Agreement, executed July 21, 2000, effective date of May 1, 2000

This agreement terminated by its own terms May 1, 2001; however, this agreement was subsequently extended by the parties and ultimately terminated about June 15, 2002.

3. Eschelon Confidential Agreement with Qwest dated 11/15/00

This agreement, including terms related to escalation processes, was terminated by the March 1, 2002 Settlement Agreement (at ¶ 3(b)(4)).

5. Eschelon Confidential Letter Agreement On Status of Switched Access Minute Reporting with Qwest dated 7/3/01

This agreement, including terms related to DUF issues, was terminated by the March 1, 2002 Settlement Agreement (at ¶ 3(b)(7)).

11. Eschelon Feature Letter from Qwest dated 11/15/00

This agreement, including terms related to the pricing for UNE-E features and use of AIN based features, was terminated by the March 1, 2002 Settlement Agreement (at ¶ 3(b)(1)).

13. Eschelon (ATI) Confidential Second Amendment To Confidential/Trade Secret Stipulation with US WEST dated 3/19/01

Paragraphs 1, 4, and 5 - by their express terms - are a resolution of historical disputes with only backward-looking compensation. Paragraph 6 relates to the negotiation of an implementation plan, which was entered into July 31, 2001, but itself was terminated by the March 1, 2002 Settlement Agreement (at ¶ 3(b)(8)).

19. McLeodUSA Confidential Letter Agreement with Qwest dated 10/26/00

Paragraph 1 of this contract says, in short, that by November 15, 2000, the parties are to meet to discuss and thereafter develop an implementation plan to establish processes and procedures to implement the interconnection agreement. Further, the implementation plan is to be finalized by December 15, 2000. In fact, the November 15 and December 15, 2000 dates passed, the parties did not establish an implementation plan, and there is no subsequent contract or documentation related to an implementation plan with McLeod. This provision does not reflect an on-going, prospective term that creates any obligations to the parties today, because all of the conduct contemplated by the provision would have been fully performed and completed by December 15, 2000.

Paragraph 2 calls for quarterly meetings to resolve business issues and disputes, and paragraph 3 outlines procedures for the escalation of disputes. These terms are currently ongoing, and thus Qwest bracketed these paragraphs requesting applicable state commissions (including Arizona) to approve them as amendments to the underlying interconnection agreement with McLeod. Qwest filed these provisions with the Arizona Commission for approval under Section 252(e) in September of 2002.

25. McLeodUSA Confidential Agreement to Provide Directory Assistance Database Entry Services with Qwest dated 2/12/01

To reiterate and supplement Qwest's position on the applicability of the section 252(e) filing requirement of this agreement in Arizona, this agreement references services that are: 1) pertaining to directory assistance databases services, which are not 251(b) or (c) services, 2) references directory database information for communities in Minnesota only, and do not relate to services provided in Arizona; and 3) relate to geographic areas in which another carrier (Frontier) serves as the ILEC, not Qwest; thus, Qwest has no section 251 obligations to provide services in such areas of Minnesota.

Without waiving its position on the non-applicability of section 252(e) to this agreement in Arizona, by its terms paragraph 1) provides that this agreement terminates upon the closing of the sale of Frontier territories to Citizens, which occurred in June of 2001, thus, this agreement terminated on that date.

26. McLeodUSA Confidential Billing Settlement Agreement with Qwest dated 9/29/00

Paragraphs 1 and 2 settle historical disputes with only backward-looking consideration. Thus, this is not within the scope of the Section 252(e) filing requirement, and in any event has been fully performed by its terms.

28. McLeodUSA Confidential Billing Settlement Agreement with US WEST dated 4/28/00

Paragraphs 1 and 2(a) resolve past disputes regarding merger proceedings, an FCC complaint relating to subscriber list information charges, and Centrex service agreements. These provisions resolve past disputes, and the subject matters of these issues do not relate to services provided under Section 251(b) or (c) and in any event have been fully performed by its terms.

Paragraph ¶ 2(b) addresses two matters. First it says that the disputed amounts incurred up to March 31, 2000 are resolved and released, and McLeod will dismiss its complaint pending before the FCC regarding subscriber line charges. Thus, this first matter is not subject to the filing requirement and has been fully performed. Second, this paragraph says that, on a going forward basis, McLeod will pay the subscriber list information rates as stated in this paragraph, or such other final rates as may be established by any cost docket proceedings or rates that the parties may negotiate. Although appearing to be a "going-forward" term, this provision does not fall within the filing requirement for two reasons. First, subscriber list information rates are provided pursuant to Section 222(e) of the Act, not Section 251, and this paragraph simply re-states the same rates listed in the FCC's order addressing subscriber list information under Section 222(e). In addition, the express language of the provision requires the parties to use the rates set for each state through cost setting proceedings; thus the state commissions' settings of these rates apply and supersede the specific rates stated in this provision.

Paragraph 2(c) provides that the parties will amend their existing interconnection agreements to change their reciprocal compensation terms from a usage-based system to a "bill and keep" arrangement for local and internet-related traffic. The parties in fact amended their interconnection agreement as stated in this paragraph through an amendment filed with the Arizona Commission pursuant to Section 252(e) and approved on 12/14/00. Thus, ¶ 2(c) has been superseded and does not represent an ongoing obligation. The remainder of this paragraph addresses contingencies related to the closure, or non-closure, of the Qwest/U S WEST merger. However, the merger has closed, and thus these remaining provisions do not obligate the parties today.

Qwest identified and bracketed ¶ 2(d) for review and approval by applicable state commissions, except for the language referencing April 30, 2000. Qwest filed this provision for approval with the Arizona Commission in September of 2002.

The final substantive paragraph is 2(e), which addresses Centrex Service Agreements, a retail offering, not a wholesale service provided under Section 251.

36. Electric Lightwave Confidential Settlement Document and Release with U S WEST dated 6/16/99

This is a settlement of a federal district court action pending at the time in the Western District of Washington.

Paragraph A(1) resolves the case in part through a take or pay, which is a volume commitment by Qwest to buy ELI's services; it does not contain any terms or conditions relating to Qwest providing Section 251(b) or (c) services to ELI. This provision is not within the Section 252 filing requirement; but, in any event, it has been fully performed and has expired by its terms.

Paragraph A(2) caps Qwest's payment for reciprocal compensation up to September 30, 1999 and is also part of the resolution of the pending lawsuit. In any event this provision has been fully performed. The remaining provisions do not contain any current, ongoing terms relating to Section 251(b) or (c) services.

38. Electric Lightwave Binding Letter Agreement with Qwest dated 7/19/01

The terms of this agreement were incorporated and superseded by the 4/26/2002 Confidential Billing Settlement Agreement with ELI.

47. WorldCom Business Escalation Agreement dated 6/29/01

This agreement is ongoing and falls within the FCC's standard under Section 252(e), and Qwest filed this agreement with the Arizona Commission for approval in September of 2002.

XX. Allegiance Coordinated Installation With No Testing Amendment with Qwest dated 1/7/02

This is the agreement which resulted from the Allegiance agreement dated December 24, 2001 (See Exh. F, No. 49) and that was filed with and approved by the Arizona Commission. Also as intended by the 12/24/01 agreement, the 1/7/02 agreement was superseded by the outcome of the cost docket.

56. XO Confidential Billing Settlement Agreement with Qwest dated 12/31/01

Paragraph 1 is a settlement of historical disputes including disputes arising out of the 5/12/00 Confidential Billing Settlement Agreement with NextLink and the 4/17/01 Amendment to Confidential Billing Settlement Agreement with XO.

Paragraph 2(a) and (b) reflect backward-looking consideration to resolve those disputes.

Paragraph 2(c) contains terms and conditions for reciprocal compensation that were superseded and governed by filed and approved amendments to ICAs. These amendments, reflecting terms and conditions for local and ISP-bound traffic, were executed by the parties in March 2002 and filed with and approved by the applicable state commissions, including Arizona, in the Spring of 2002.

Paragraph 2(d) involves XO bills to QC for intrastate switched access, not a Section 251 ILEC obligation or service, and therefore does not involve the 252 filing requirement.

Paragraph 2(e) relates to interstate tariffed services, not local Section 251 services.

Paragraph 2(f) and (g) do not contain or concern terms related to Section 251.

Paragraph 3's escalation procedures and Exhibit B to the agreement have been identified and filed for approval with the Arizona Commission in September of 2002.

57. XO Take or Pay Agreement with Qwest Services Corp. dated 12/31/01

This is a volume purchase agreement that does not contain new terms or conditions for Section 251(b) or (c) services; in any event, Qwest believes that this agreement has not terminated or been superseded.

67. SBC Letter from US WEST Regarding Proposed Settlement Terms dated 6/1/00

The line sharing form attached to the SBC letter appears to have been a mistake in copying and stapling and not part of any contract with SBC. In any event, however, the line sharing form (unexecuted) is Qwest's "permanent line sharing agreement," and executed agreements have been filed for state commission approval in applicable states.

Paragraphs 1 and 3 restate established pick and choose obligations under Section 252(i) and state commission rules or orders regarding opt-in rights and approvals of interconnection agreements. These paragraphs do not present any new terms or conditions under Section 251.

Paragraph 2, relating to a particular DS3 facility, has been fully performed and does not reflect any current obligations.

Paragraph 4 has been identified and filed for approval in Arizona in September of 2002.

68. SBC & NAS Confidential Consent to Assignment & Collocation Change of Responsibility Agreement dated 6/1/01

This contract is a settlement of a historical dispute with NAS (Network Asset Solutions) and an assignment of collocation from NAS to SBC under the terms of the SBC Interconnection Agreements. Therefore, the terms of collocation are governed by the SBC Interconnection Agreements. Qwest believes that a consent to an assignment of collocation from one CLEC to another is not an ongoing term of interconnection, but in any event, any currently ongoing terms of interconnection are superseded and governed by SBC's Interconnection Agreement.

70. e-spire Confidential Billing Settlement Agreement with Qwest dated 6/20/01

This agreement is a settlement of a historic dispute with no going forward obligations under Section 251 and thus no filing obligation under Section 252. In any event, the terms of this agreement have been fully performed and have expired.

81. Scindo Networks Confidential Settlement Agreement with Qwest dated 5/4/01

This agreement has terminated and has expired by virtue of Scindo's no longer being in existence. Accordingly, it does not contain any current obligations.

82. Scindo Networks Confidential Settlement Agreement with Qwest dated 8/10/01

This agreement has terminated and has expired by virtue of Scindo's no longer being in existence. Accordingly, it does not contain any current obligations.

84. Ernest Comm. Confidential Settlement Agreement and Release with Qwest dated 9/17/01

Paragraph A resolves a historical dispute and is not within the filing requirement under Section 252.

Paragraphs B and E contain current, ongoing terms related to UNE-P payphone lines, and Qwest filed these provisions for approval with the Arizona Commission in September of 2002.

91. Arch Comm. Confidential Billing Settlement Agreement with Qwest dated 6/16/01

Qwest believes that the Staff intended to list the agreement of the same title dated 6/16/00.

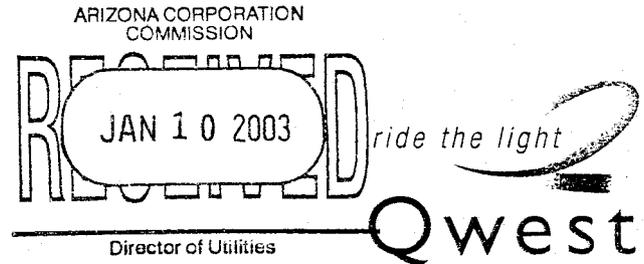
This agreement is a settlement of a historical dispute with no going forward obligations under Section 251, and is therefore not subject to Section 252. In any event, it was superseded by a filed Interconnection Agreement approved by the Arizona Commission on 10/10/00.

Respondent: Legal

Marta

3033 North Third Street, Suite 1010  
Phoenix, Arizona 85012 -  
Office 602-630-8255  
Fax 602-235-3107

Monica Luckritz  
Manager - Policy and Law



January 9, 2003

Maureen Scott, Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Dear Ms. Scott:

Re: Qwest Corporation  
Docket No. T-00000F-02-0271

Enclosed, please find Qwest Corporation's responses to STF 06-001, -002, -003, -004, -005, -006 and -007 in Staff's sixth set of data requests in the above referenced docket. Please note that the responses to STF 06-001 and -002 are highly confidential and their use is restricted per the Protective Agreement.

If you have questions, please contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Monica Luckritz".

Enclosures

cc: Gary H. Horton, Staff Attorney  
Michele Finical, Legal Division  
Marta Kalleberg, Utilities Division

Arizona  
RT-00000F-02-0271  
STF 06-005

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 005

Indicate whether the ICNAM Service Agreement with U S WEST and Allegiance dated 3/23/00 has been canceled, terminated, superseded, or has expired.

RESPONSE:

It has not.

Respondent: Legal

Arizona  
RT-00000F-02-0271  
STF 06-007

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 007

Indicate whether the Confidential Billing Settlement Agreement with Qwest and Eschelon dated 11/15/00 (Exhibit F, #12) has been canceled, terminated, superseded, or has expired.

RESPONSE:

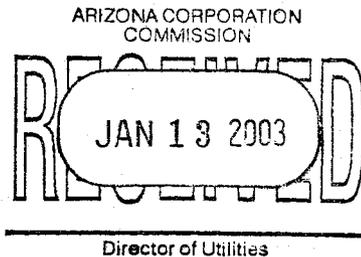
¶ 2 is a settlement of a historical dispute and has been fully performed. Provisions contained in ¶ 1 regarding "new platform" evidence an intention to enter into and file an interconnection agreement and are contained, reflected in and superseded by a filed interconnection Amendment No. 7 to the Eschelon Interconnection Agreement that was approved by the Arizona Commission. Thus, there are no current, ongoing terms today in Agreement No. 12.

Respondent: Legal

3033 North Third Street, Suite 1010  
Phoenix, Arizona 85012  
Office 602-630-8255  
Fax 602-235-3107

Monica Luckritz  
Manager - Policy and Law

January 10, 2003



Maureen Scott, Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Dear Ms. Scott:

Re: Qwest Corporation  
Docket No. T-00000F-02-0271

Enclosed, please find Qwest Corporation's responses to STF 07-001, -002 and -003 in Staff's seventh set of data requests in the above referenced docket. Portions of these responses are proprietary and are provided pursuant to the terms of the Protective Agreement.

If you have questions, please contact me.

Very truly yours,

Monica Luckritz  
(gm)

A handwritten signature in cursive script that reads "Monica Luckritz". Below the signature, the initials "(gm)" are written in a smaller, simpler font.

Enclosures

cc: Gary H. Horton, Staff Attorney  
Michele Finical, Legal Division  
Marta Kalleberg, Utilities Division

Arizona  
RT-00000F-02-0271  
STF 07-001

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 001

Indicate whether the Confidential Billing settlement Agreement (Non-COBRA) with Qwest and WorldCom dated 6/29/01 has been canceled, terminated, superseded, or has expired.

RESPONSE:

Paragraphs 1 through 4 and 6 are settlements of historical disputes and have been fully performed. Paragraph 5 states that the parties will amend their interconnection agreements regarding reciprocal compensation, and in fact the parties executed an amendment and filed it for approval with the Arizona Commission on September 21, 2001, Docket No. T01051B-01-0746. That amendment was approved by the Commission on November 29, 2001, Decision No. 64237. The going-forward terms in Paragraphs 7 and 8 were filed for Commission approval on September 9, 2002 and approved by the Commission on December 19, 2002.

Respondent: Legal

3033 North Third Street, Suite 1010  
Phoenix, Arizona 85012  
Office 602-630-8255  
Fax 602-235-3107

**Monica Luckritz**  
Manager - Policy and Law



January 22, 2003

Maureen Scott, Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Dear Ms. Scott:

Re: Qwest Corporation  
Docket No. T-00000F-02-0271

Enclosed, please find Qwest Corporation's responses to STF 11-001, -002, -003 and -005 in Staff's eleventh set of data requests in the above referenced docket. Please note that STF 11-004 is not included and will be provided at a future date. Portions of these responses are proprietary and are provided pursuant to the terms of the Protective Agreement.

If you have questions, please contact me.

Very truly yours,

*Monica Luckritz*  
(jm)

Enclosures

cc: Gary H. Horton, Staff Attorney  
Michele Finical, Legal Division  
Marta Kalleberg, Utilities Division

Arizona  
RT-00000F-02-0271  
STF 11-003

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 003

Qwest stated in its supplemental response to Staff's third set of data requests that paragraph 1 of the Confidential Billing Settlement Agreement with McLeod dated September 29, 2000, has been fully performed by its terms. When was paragraph 1 fully performed? On what date was the creation of the new platform mentioned in Paragraph 1 completed?

RESPONSE:

The new platform (UNE-M) was effective 10/1/00.

Respondent: Arturo Ibarra

Arizona  
RT-00000F-02-0271  
STF 11-005

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 005

In response to Staff's inquiry as to whether the Proposed Settlement Terms Letter with SBC dated June 1, 2000, was canceled, terminated, superseded, or had expired, Qwest stated that paragraph 1 of the Proposed Settlement Terms Letter with SBC dated June 1, 2000, does not contain any new terms under Section 251. This response does not address the question asked by Staff. Again, indicate whether the Proposed Settlement terms Letter with SBC dated June 1, 2000, was canceled, terminated, superseded, or has expired.

RESPONSE:

Paragraph 1 has been superseded by the filed and approved interconnection agreement.

Respondent: Legal

3033 North Third Street, Suite 1010  
Phoenix, Arizona 85012  
Office 602-630-8255  
Fax 602-235-3107

Monica Luckritz  
Manager - Policy and Law



January 24, 2003

Maureen Scott, Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Dear Ms. Scott:

Re: Qwest Corporation  
Docket No. T-00000F-02-0271

Enclosed, please find Qwest Corporation's response to STF 11-004 in Staff's eleventh set of data requests in the above referenced docket. Also enclosed is Qwest's supplemental response to STF 06-006S1.

If you have questions, please contact me.

Very truly yours,

*Monica Luckritz*  
(j.m)

Enclosures

cc: Gary H. Horton, Staff Attorney  
Michele Finical, Legal Division  
~~Marta Kalleberg, Utilities Division~~

Arizona  
RT-00000F-02-0271  
STF 11-004

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 004

Qwest stated in its supplemental response to Staff's third set of data requests that the subscriber list information rates in paragraph 2(b) of the Confidential Billing Settlement Agreement with McLeod dated April 28, 2000, were superseded by rates set at the state level. In Arizona, did McLeod pay the rates set forth in paragraph 2(b) for subscriber list information? If so, what were the dates under which McLeod paid these rates? Please give the beginning and ending dates.

RESPONSE:

Per FCC Order, subscriber list information rates are within Section 222, not 251(b) or (c), thus, this matter is outside of Section 252 and the scope of this case.

McLeod paid the rates set forth in paragraph 2(b) for subscriber list information. Qwest began billing those rates effective December 14, 1999, and those rates are currently in effect between the parties. The rates set forth in paragraph 2(b) are the rates Qwest has charged all its subscriber list information customers since the effective date of the FCC's Third Report and Order, December 14, 1999.

Respondent: Legal

COPY

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Phoenix, Arizona 85012  
Office 602-630-8255  
Fax 602-235-3107

**Monica Luckritz**  
Manager - Policy and Law

Qwest

January 28, 2003

Maureen Scott, Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Dear Ms. Scott:

Re: Qwest Corporation  
Docket No. T-00000F-02-0271

Enclosed, please find Qwest Corporation's response to STF 12-001 in Staff's twelfth set of data requests in the above referenced docket.

If you have questions, please contact me.

Very truly yours,

*Monica Luckritz*  
(2003)

Enclosures

cc: Gary H. Horton, Staff Attorney  
Michele Finical, Legal Division  
Marta Kalleberg, Utilities Division

S 024230

Arizona  
RT-00000F-02-0271  
STF 12-001

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 001

Indicate whether the Confidential Billing Settlement Agreement with Qwest and Paging Network (Exhibit F #89) dated 4/23/01 has been canceled, terminated, superseded, or has expired.

RESPONSE:

Because PageNet was subsumed by Arch Communications, and the Arch Communications Interconnection Agreement is the operative agreement for the combined companies, this agreement contains no going-forward terms that are in effect and is superseded and terminated.

Respondent: Legal