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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** **AT&T'S INITIAL BRIEF**

PUBLIC VERSION – TRADE SECRET DATA REDACTED

AT&T Communications of the Mountain States, Inc., and TCG Phoenix (collectively "AT&T") submit this initial brief in the above-captioned matter.

I. INTRODUCTION

The evidence presented in this case clearly shows that Qwest has violated the law by intentionally and willfully failing to file certain interconnection agreements as required under 47 U.S.C. 252 and Arizona Administrative Code Title 14, Chapter 2, Article 15, paragraph 1506. Qwest's motive for this conduct appears to be two-fold: to silence opposition to its section 271 application and to gain entry into the in-region interLATA long distance market while maintaining its stranglehold on the local market. Qwest negotiated such silence as part of the unfiled interconnection agreements. Qwest sought, through these agreements, to provide section 251(b) and (c) services to certain parties in a discriminatory manner and to eliminate or postpone the need to fix the same problems for all similarly situated participants. In other cases, the agreements hid problems Qwest had in meeting its section 251(c) obligations. As a result, participation by some competitive local exchange carriers ("CLECs") in Qwest's section 271 application proceedings was eliminated, and the results of those proceedings were distorted. Moreover, the existence of these unfiled interconnection agreements demonstrates that Qwest's local markets are not truly open to all competitors on an equal, nondiscriminatory basis.

Qwest's actions demonstrate the continued viability of the Arizona State Constitution, Arizona Revised Statutes and the Arizona Corporation Commission. Qwest's actions also demonstrate that the policy decisions inherent in the Telecommunications Act of 1996 ("Act") are sound public policy. The Commission's roles and responsibilities under these laws are huge, and the Commission's decisions and orders in implementing these laws determine the scope and type of competition that will be available to Arizona consumers of telecommunications services. Qwest, as a monopoly, has an inherent bias in maintaining its monopoly position. Its actions must not be viewed in the context of a competitive market but as a monopolist, taking into consideration state and federal laws and the public policy inherent in those laws.

Qwest argues it had legitimate business reasons for the entering into and not filing the secret agreements. However, viewed in the context of the federal Act and state law, the facts do not support Qwest's positions. The facts show that Qwest entered into 96 agreements with competitive local exchange carriers that were not filed for Commission approval.[1] Arguably, a number of these agreements did not have to be filed, as the agreements were settlement agreements with no ongoing obligations.[2] Qwest found it necessary to enter into 96 agreements

[1] Joint Exhibit 1.

[2] The large number of settlement agreements alone should cause the Commission concern. All of these settlements resolved disputes that arose and were ultimately settled during the section 271 process with respect to section 251 services, unbeknownst to the Commission.

to resolve CLEC concerns. The large number of agreements by themselves and with so many different CLECs raises serious questions regarding Qwest's compliance with section 271. Qwest suggests these agreements show it was trying to work with CLECs to settle disputes. AT&T suggests many of these disputes arose not only because of Qwest's failure to comply with section 271 but because of Qwest's dominant position as the CLECs' only supplier and were settled only to avoid public disclosure of problems by the numerous CLECs.

There may be little, if any, evidence regarding some of the smaller CLECs, however, the evidence is overwhelming that Qwest was not meeting its section 271 obligations with Eschelon and McLeod. Qwest's own witnesses admit its UNE-P processes were inadequate, necessitating the creation of a new product – UNE Star – for Eschelon **CONFIDENTIAL [**[redacted]**]**. Qwest admits it could not provide switched access (DUF) records to the CLECs which would allow the CLECs to bill interexchange carriers ("IXCs") for switched access. These were systemic problems. The failure to file these agreements must be viewed in light of the systemic problems affecting all CLECs. Viewed in their totality, both RUCO and Staff found that Qwest's failure to file the agreements was willful. There is ample evidence to support their positions.

AT&T believes that sanctions in the form of fines and penalties proposed by Staff and RUCO are appropriate in this case. More importantly, however, this Commission should not reward Qwest's behavior with a statement of approval of Qwest's application for authority to provide interLATA service under 47 U.S.C. 271, until the Commission has reviewed the results of the section 252(e) investigation in the public interest portion of the section 271 proceeding.

II. ARGUMENTS

A. Qwest's Filing Obligation

Under section 251(c) of the federal Telecommunications Act of 1996 ("the Act"), incumbent local exchange carriers have a duty to provide "interconnection with the local exchange carrier's network" and to negotiate in good faith the terms and conditions necessary to accomplish that interconnection. Moreover, the interconnection must be "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and…on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. 251(c)(2)(C) and (D).

If the nondiscrimination provisions of the Act are to be given meaning, then clearly the word "agreement" must be interpreted broadly and applied equally to those exhaustive, detailed interconnection agreements which have been the subject of laborious negotiations and perhaps even arbitration, as well as to agreements which cover only specific segments, fragments, or parts of the overall interconnection arrangement between carriers. Similarly, the word "agreement" must apply to such things as dispute settlements, amendments to interconnection agreements, letters of intent, memoranda of understanding, and other contracts, waivers, releases, or other contractual arrangements, regardless of form, if the agreements contain ongoing obligations. If the word "agreement" is *not given this* broad interpretation, then every incumbent that is subject to these nondiscrimination provisions will attempt to circumvent them by means of a series of "small" side agreements. The result will be a complete undermining of the nondiscrimination requirements.

The FCC supports a broad interpretation of the word "agreements" and has stated that the filing and approval requirements of the Act should be applied expansively to "all" interconnection agreements:

> As a matter of policy, moreover, we believe that requiring filing of all interconnection agreements best promotes Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms. State commissions should have the opportunity to review *all* agreements, including those that were negotiated before the new law was enacted, to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest.[3]

Under 47 U.S.C. 252(e), interconnection agreements must be approved by the appropriate state commission. And under 47 U.S.C. 252(h), agreements which have been approved must be filed and made available for public inspection. Additionally, under section 252(i), the incumbent is obligated to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." It is clear that the filing and public inspection requirements, together with the so-called "pick and choose" provisions of section 252(i), are all intended to facilitate the enforcement of the nondiscrimination requirements of 47 U.S.C. 251(c)(2)(C) and (D).

> Requiring all contracts to be filed also limits an incumbent LEC's ability to discriminate among carriers, for at least two reasons. First, requiring public filing of agreements enables carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others. Second, any interconnection, service or network element provided under an agreement approved by the state commission under section 252 must be made available to any other requesting telecommunications carrier upon the same terms and conditions, in accordance with section 252(i).[4]

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[3] *In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499, 1996 WL 452885, rel. August 8, 1996, ¶ 167. ("*Local Competition Order*") (emphasis in original).

[4] *Id.*, ¶ 167. These approval, filing, and "pick and choose" provisions have been recognized by the FCC as being "central to the statutory scheme and to the emergence of competition." *Id.*, ¶ 1309.

The importance of these nondiscrimination provisions to new entrants cannot be overstated. Quite simply, they are essential to the development and growth of competition, and their elimination would further an incumbent local exchange carrier's ("ILECs") ability to exercise its market power. Any proposal to eliminate or reduce the approval, filing, and "pick and choose" requirements of the federal Act is based upon the erroneous premise that ILECs are eager to enter into interconnection agreements with their potential competitors and that only the ILECs' obligations under 47 U.S.C. §§252(i) and 252(e) stand in the way of widespread voluntary arrangements. The reality, of course, is that ILECs have little or no incentive to negotiate with potential competitors and every incentive to engage in discrimination to prevent any significant erosion of their local monopolies.

Over the six or more years in which the Act has been in effect, there have been innumerable agreements negotiated between carriers and approved by the Arizona Commission. Qwest's Statement of Generally Available Terms and Conditions ("SGAT") was thoroughly and painstakingly reviewed in the section 271 proceeding One result of these processes is that the subject matter of interconnection agreements is fairly well defined. A brief glance at the table of contents for Qwest's SGAT reveals that the subject matter of an interconnection agreement can range from the obvious topics of payment, pricing, branding, resale, and the definition of unbundled network elements, to the more indirect (but no less important) subjects of dispute resolution, maintenance, and network security.

Any agreement which would give one carrier an advantage over another in the area of interconnection must be subject to approval, and then filed and made available pursuant to sections 252(e), (h), and (i). This follows directly from the nondiscrimination provisions of the

Act, *viz.*, sections 251(c)(2)(C) and (D). For example, an agreement giving a carrier special privileges or processes for escalating a problem or a trouble ticket should be approved and filed.

Furthermore, the Act does not make allowance for avoiding the approval and filing requirements in the event a new agreement is identical to a previously filed agreement, either in whole or in part. Certainly the fact that a subsequent agreement is identical in some manner to a filed agreement should make it easier and quicker for the approval process to be completed. However, the Act does not eliminate the approval process based on the fact that a new agreement matches one already on file.

Additionally, because of the "pick and choose" provisions of section 252(i), it is clear that the approval and filing of an agreement is necessary even if the agreement does not cover or address all or even a substantial portion of the total issues involved in interconnection. As noted *supra*, if the word "agreement" is not given a broad interpretation, then every incumbent that is subject to the nondiscrimination provisions of the federal Act could attempt to circumvent those provisions by means of a series of "small" side agreements. The result will be a complete undermining of those nondiscrimination requirements. Thus, an agreement need not cover all, or even a majority, of the many aspects of interconnection in order to be an interconnection agreement subject to the approval and filing requirements of section 251(c).

B. Qwest's Excuses for Not Filing

Qwest ignores the market power which the Company clearly possesses in its provision of local exchange service, as well as the incentives which the Company has to wield and perpetuate that market power. It presumes that effective competition already exists in the local market, and then insists that reasonable regulatory steps to prevent discrimination and to foster and encourage the development of competition are not only unnecessary, but contrary to public policy.

Qwest's arguments may be summarized as follows:

1. The Federal Telecommunications Act of 1996 ("the Act") is "pro-competitive, and deregulatory" and therefore requires that the approval and filing requirements of section 251 and 252 be read in a narrow fashion.

2. The language of section 252(a)(1) requiring that an interconnection agreement include "a detailed schedule of itemized charges" for interconnection and each service or network element included in the agreement serves as a limit to which agreements must be filed and approved under sections 251 and 252.

3. Miscategorizing exempt contracts is contrary to public interest and the Act because a broader reading: a) imposes administrative burdens; b) undermines the incentives for ILECs to negotiate and rapidly settle disputed issues; c) introduces a higher level of uncertainty into the contractual relationship between the ILEC and other carriers; and d) will impede the ability of ILECs and their competitors to develop pro-competitive and creative arrangements that serve to advance local competition.[5]

AT&T responded to every one of Qwest's arguments in its initial comments on Qwest filing obligations, finding Qwest arguments meritless.[6] AT&T does not intend to repeat its positions because the Federal Communications Commission ("FCC") also addressed Qwest's arguments and rejected them. However, a few points are worth noting. First, Staff had little problem adopting a standard consistent with the Act in its Supplemental Report: "[T]he term 'interconnection agreement' as used in Section 252(e) must be defined broadly, in Staff's opinion, to include any contractual agreement or amendment which relates to or affects interconnection, wholesale services or network elements between an ILEC and another carrier in Arizona."[7] This standard is consistent with the FCC's subsequent declaratory order. Second, Qwest had no disagreement with the definition of an interconnection agreement, as evidenced by its SGAT.[8] Third, the issue of what agreements need to be filed for Commission approval was

[5] Qwest's Comments at 5.
[6] AT&T's Comments on Section 252(e) of the Act and Response to Qwest's Comments Regarding Filing Obligations, dated May 24, 2002, at 6-20.
[7] Supplemental Staff Report and Recommendation dated April 14, 2002, at 6.
[8] SGAT, § 4.92 ("Interconnection Agreement" or "Agreement").

not a national problem but confined to Qwest,[9] because the Act and the FCC provided an articulate standard regarding the types of agreements that needed to be filed.[10]

C. The FCC's Declaratory Order

On October 4, 2002, the FCC released its Memorandum Opinion and Order in response to a Qwest petition seeking a declaratory ruling of Qwest's filing obligations under section 252(e) of the Act.[11] It generally rejected Qwest's request. The FCC determined 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). This interpretation, which directly flows from the language of the Act, is consistent with the pro-competitive, deregulatory framework set forth in the Act.[12]The FCC did identify certain circumstances where an agreement need not be filed:

1. Although the FCC found that dispute resolution and escalation provisions are interconnection agreements within the scope of the Act, for these two types of provisions, and these two types only, the FCC stated if made generally available, for example made available on its web-site, Qwest need not file these agreements for approval.[13]

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[9] RUCO at 11.

[10] 47 U.S.C. § 252(e); *Local Competition Order*, ¶ 167.

[11] *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 Memorandum Opinion and Order, FCC 02-0276 (rel Oct 4, 2002) ("Declaratory Order"). A copy of the order is attached to Staff witness Kalleberg's testimony. *See* ST-1, Ex S-2.

[12] *Id.*, ¶ 8 (emphasis in original).

[13] *Id.*, ¶ 9. This paragraph of the FCC's order is limited to dispute resolution and escalation provisions, not provisions generally. The FCC provided no support for this conclusion, and it is legally suspect.

2. "[S]ettlement agreements that simply provide 'backward-looking consideration' … need not be filed[14]

3. "[O]rder 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 specific service, the terms and conditions of which are set forth in a filed interconnection agreement."[15]

4. Agreements entered into with bankrupt creditors at the direction of the bankruptcy court or trustee "and do not otherwise change the terms and conditions of the underlying interconnection agreements are not interconnection agreements or amendments" that need be filed.[16]

Using the analysis provided above, it is clear that all of the agreements identified by Staff were subject to the section 252 approval process, and should have been filed and made available to other carriers under the federal Act.[17]

D. The Unfiled Agreements

AT&T does not intend to describe at length the terms of the unfiled agreements. Staff and RUCO's testimony adequately describe the terms and conditions of the Eschelon and McLeod agreements. However, it is important to understand the intent of these agreements. It is important that the Commission view the purpose and content of the agreements in the time frame they were negotiated, not after the fact. Qwest would have the Commission believe that they should not be fined or penalized at all because no other CLECs were harmed or discriminated against using hindsight. Qwest's approach, if allowed to prevail, would undermine the provisions of the Act, by permitting Qwest to discriminate and subsequently claim "no-harm – no foul."

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[14] *Id.*, ¶ 12.
[15] *Id.*, ¶ 13.
[16] *Id.*, ¶ 14.
[17] AT&T may have some minor differences with Staff regarding the final list of agreements that needed to be filed. AT&T sees no need to enter into a debate over Staff's final list because AT&T is free to subsequently attempt to opt-in to any agreement not on Staff's list.

None of Qwest's witnesses were involved in negotiating the agreements. Only one Qwest witness arguably was involved in the implementation of the agreements. Qwest did not offer or admit any documentation or memorandum that were made or compiled at the time of the negotiations and the agreements were entered to that provides support for the testimony of its witnesses regarding why the agreements were not filed or that explains the nature or purposes of the agreements. Essentially, the testimony of Qwest is hearsay. Therefore, the documentation admitted into the record provides the clearest explanation of the intent of the negotiations. What does the record show:

1. The agreements were entered into during the section 271 process.

Most of the agreements were entered into during the section 271 process. Qwest had an incentive to demonstrate compliance with section 271 of the Act. The incentive became greater as it perceived it was reaching its goal.[18] Parties coming forward and raising problems with Qwest's compliance was not in Qwest's best interests.

2. Eschelon **CONFIDENTIAL:** [[redacted]] were two of Qwest's largest customers.

Eschelon **CONFIDENTIAL:** [[redacted]] were two of Qwest's largest customers.[19] Eschelon, prior to entering into the unfiled agreements, was one of Qwest's most vocal critics. **CONFIDENTIAL:** [[redacted]].

[18] Most of the agreements were entered into in 2000 and 2001.
[19] *See* ST-2, Exhibit S-18.
[20] Providing a discount on tariff services, *i.e.* switched access and retail services, is also discriminatory under Arizona law. Carriers are required by state law to charge the tariff rate -- no more, no less. Staff has not addressed this violation of Arizona law.

3. Although Qwest denies there was a 10% discount, the documentation discloses the discounts existed.

Qwest denies Eschelon **CONFIDENTIAL:** [[redacted]] received a 10% discount on services purchased from Qwest. However, the documents that evidence the negotiations refer to the discount. Eschelon **CONFIDENTIAL:** [[redacted]] thought they were negotiating a 10% discount. Payments to Eschelon **CONFIDENTIAL:** [[redacted]] reflect a 10% discount on all services purchased.

There is no need to provide a lengthy description of the evidence which documents the 10% discounts to **CONFIDENTIAL:** [[redacted]] Eschelon. Staff and RUCO's witnesses do a very good job.[21] RUCO witness Deanhardt cites evidence of a 10% discount for **CONFIDENTIAL:** [[redacted]] that pre-dates and post-dates the agreement.

Several items are worthy of mention:

a) The 10% discount applied to all purchases, effectively make the discount on network elements larger.[22]

b) **CONFIDENTIAL:** [[redacted]].[23]

c) **CONFIDENTIAL:**[[redacted]].[24]

d) **CONFIDENTIAL:** [[redacted]].[25]

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[21] *See* RUCO 1D (Deanhardt) at 14-46 (McLeod) & 56-61 (Eschelon).
[22] *Id.*, at 12.
[23] *Id.*, at 18-19.
[24] *Id.*, at 19.
[25] *Id.*

e) **CONFIDENTIAL: [**[redacted]].[26]

f) **CONFIDENTIAL: [**[redacted]].[27]

g) Eschelon's representative also testified in a deposition that Qwest wanted a "unique arrangement" so other carriers could not opt-in.[28]

h) On November 5, 2000, 10 days before the 10% discount was reduced in the form of a consulting agreement, Eschelon's representative sent a letter to Qwest referring to a 10% discount that had been agreed to on October 21, 2000, and stated that Eschelon "may also have a mechanism that makes it more difficult for any party to opt into our agreements."[29]

4. All CLECs provided valuable services to Qwest, and Eschelon's consulting services were not unique.

Qwest argues that Eschelon provided valuable consulting services that support the legitimacy of the consulting contract. However, there are no documents that evidence negotiations for Eschelon consulting services. Any evidence of a bona fide consulting agreement post-date the agreement and lack credibility.

Qwest's major argument is that Eschelon provided actual services to enable it to release a new product. This provides no legitimate basis for the agreement. Every CLEC that was doing business with Qwest dedicated resources to enable Qwest to provide a product to the CLEC.[30] None of the other CLECs got paid. Qwest's witness admitted the valuable work CLECs dedicated to Qwest's change management process.[31] In fact, every product Qwest offered that was required under the Act was a "new" product. No CLEC got paid to assist Qwest in

[26] *Id.*, at 37; Exhibits CD-34. CD-36 **CONFIDENTIAL:** [redacted]], CD-38 and CD-40 **CONFIDENTIAL[**[redacted]]
[27] *Id.*, at 10-44; Exhibits CD-44-55.
[28] *Id.*, at 56.
[29] *Id.*, at 56-57; Exhibit CD-63.
[30] RUCO 1B at 60.
[31] TR 325 (March 18, 2003).

launching these new products.[32] Only Eschelon got paid an amount equal to 10% of services it purchased.

Finally, the agreement itself demonstrates it was a sham. The consulting agreement ties Eschelon's consulting revenues from Qwest to the amount of purchases Eschelon makes from Qwest. The consulting agreement contains purchase commitments that Eschelon must meet; and, if Eschelon fails to meet the purchase commitments, then Eschelon gets no consulting payments, regardless of how much consulting services Eschelon provided Qwest.[33]

5. McLeod, Eschelon and Qwest misled the Commission and CLECs by filing agreements that disclosed only portions of the terms and conditions negotiated.

Although Qwest did file amendments to Eschelon and McLeod's interconnection agreements at the time the secret agreements were negotiated and entered into, the publicly-filed agreements did not disclose the entire terms of the agreements, nor did the public agreements provide an accurate portrayal of the economics of the agreements.

On October 26, 2000, McLeod and Qwest entered into **CONFIDENTIAL: [[redacted]]** agreements.[34] Only one of these agreements was filed, the Amendment No. 4 to the Interconnection Agreement Between McLeod USA Telecommunications Services, Inc. and Qwest Corporation.[35]

On November 15, 2000, Eschelon and Qwest entered into 7 agreements.[36] Only one of these agreements was filed, the Amendment No.7 to the Interconnection Agreement Between Eschelon Telecom of Arizona, Inc. and Qwest Corporation in Arizona.[37] The agreements filed with the Commission fail to disclose the true nature of the agreements as a whole and

[32] *Id.*
[33] *Id.*, at 58; Joint Exhibit 4, ¶ 3.
[34] Joint Exhibit 1, Nos. 19, and 21-23.
[35] RUCO 1C, Exhibit MDC-4A.
[36] Joint Exhibit 1, Nos. 3-4, 7, 9-10 and 12.
[37] RUCO 1C, Exhibit MDC-6A.

misrepresent the true economics of the agreements Eschelon **CONFIDENTIAL: [**[redacted]**]** made with Qwest.

RUCO witness Cortez analyzed the agreements as a whole and arrived at a number of conclusions.[38] First, persons looking at the publicly-available agreements would not consider the agreements to be an attractive option when compared to the resale rates and the cost of conversion.[39] Since the 10% discount was not in any publicly-filed agreement, other CLECs would not be aware that Eschelon **CONFIDENTIAL: [**[redacted]**]** were receiving discounts on the UNE-Star product and all other purchases made by Eschelon **CONFIDENTIAL: [**[redacted]**]** from Qwest.[40] **CONFIDENTIAL: [**[redacted]**]**.

[38] RUCO 1C at 2-6.
[39] *Id.*, at 4-5 and 16.
[40] *Id.*
[41] Joint Exhibit 1, No. 26.
[42] *Id.*, at 4.
[43] *Id.*, at 4, n. 2.
[44] Joint Exhibit 1, No. 22.

Eschelon and Qwest entered into an agreement that required Qwest to pay Eschelon $10 million by November 17, 2000.[45] The subsequent amendment that was filed required Eschelon to pay Qwest $10 million to convert to UNE-Star.[46] Arguably, the true cost to Eschelon to convert to UNE-Star was $0.

In the publicly-available Eschelon agreement (at paragraph 2.10), Eschelon agrees to pay Qwest for a dedicated provisioning team. Paragraph 2.10 contains one sentence, or two lines of text. On the same day, Eschelon and Qwest entered into another agreement that describes in detail the nature of the dedicated provisioning team.[47] Paragraph 3.3 of the publicly-available agreement states that Qwest will provide Eschelon daily usage information to allow Eschelon to bill IXCs for switched access. However, on the same day, Eschelon and Qwest entered into an agreement whereby Qwest more fully set out the terms regarding the provision of DUF records.[48] Another unfiled agreement was entered on November 15, 2000, that required Qwest to pay Eschelon a $13.00 per-line credit every time Qwest fails to provide accurate DUF records.[49] It is obvious the publicly-filed agreement does not accurately reflect the entire agreement entered into between Qwest and Eschelon on November 15, 2000.

Both the McLeod and Eschelon publicly-available agreements state at paragraph 1.8 that "[n]either the Agreements nor this Amendment may be further amended or altered except by written instrument executed by an authorized representative of both Parties. The clear implication is that the filed agreements are the entire agreement, since the agreements containing the language was publicly-filed.

[45] *Id.,* at 5 and 13-14; Joint Exhibit 1, No. 4.
[46] *Id.;* Exhibit MDC-6A.
[47] Joint Exhibit 1, No. 2.
[48] Joint Exhibit 1, No.9.
[49] *Id.,* No. 4 (¶ 2).

One need only review the publicly-available agreements and the unfiled agreements to come to the obvious conclusion that the publicly-available agreements did not accurately reflect the agreements Eschelon and McLeod entered into with Qwest.

6. Even though Qwest silenced its critics, service problems continued.

According to Eschelon, after the agreements were entered into it continued to experience service, access and billing problems.[50] However, Eschelon was prohibited from bringing these service problems to the attention of the Commission.

E. Penalties and Remedies

AT&T supports the penalties proposed by Staff and RUCO. Anyone reading the testimony filed by Staff and RUCO and the exhibits submitted by them will come to the same conclusions reached by them. Viewed in their entirety, the testimony and exhibits demonstrate that: 1) Qwest provided unlawful and discriminatory discounts to **CONFIDENTIAL: [**[redacted]] Eschelon, 2) Qwest misled the Commission and other CLECs regarding the true nature of the agreements between Qwest and McLeod, 3) Qwest, Eschelon **CONFIDENTIAL: [**[redacted]] willfully and knowingly misled the Commission and other CLECs, 4) Qwest intended to prevent **CONFIDENTIAL : [**[redacted]] Eschelon from disclosing problems with Qwest's processes and products that Qwest was obligated to provide pursuant to section 251(c) of the Act,[51] and 5) Qwest, Eschelon **CONFIDENTIAL: [**[redacted]] knowingly structured the agreements in an attempt to evade the filing obligations and opt-in requirements of the Act. No other conclusions can be drawn from the testimony and exhibits.

These actions on the part of Qwest, Eschelon **CONFIDENTIAL: [**[redacted]] require the Commission to use its enforcement authority to deter future behavior and ameliorate the

[50] ST-1 at 21.
[51] The inability of Qwest to provision UNE-P and provide accurate DUF records are two examples.

negative effects on other CLECs and competition. Staff and RUCO's proposed remedies attempt to address these issue and are appropriate.

Simply put, the Commission needs to send a strong message to Qwest that this type of behavior is unacceptable. It can do this by adopting Staff and RUCO's proposed remedies.

Respectfully submitted this 1st day of May, 2003.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. AND TCG PHOENIX

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