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ARIZONA CORPORATION COMMISSION
REGULATORY CONTROL

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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman

JAMES M. IRVIN
Commissioner

WILLIAM MUNDELL
Commissioner

JEFF HATCH-MILLER
Commissioner

MIKE GLEASON
Commissioner

Arizona Corporation Commission
DOCKETED

AUG 14 2003

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

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH SECTION 271 OF THE
COMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000A-97-0238

ARIZONA CORPORATION COMMISSION,

Complainant,

DOCKET NO. T-01051B-02-0871

v.

QWEST CORPORATION,

Respondent.

DAVID ZIEGLER

TESTIMONY IN SUPPORT OF PROPOSED SETTLEMENT AGREEMENT

ON BEHALF OF

QWEST CORPORATION

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Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND CURRENT POSITION.

A. My name is David Ziegler. I am employed by Qwest Services Corporation (“Qwest”) as Assistant Vice President – Arizona Public Policy. My business address is 4041 North Central Avenue, Phoenix, Arizona 85012.

Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?

A. I am responsible for regulatory, legislative and community affairs in Arizona.

Q. PLEASE REVIEW YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.

A. I received a Bachelor of Science degree in Business Administration (summa cum laude) from Columbia College in 1988. I have also attended numerous industry seminars on economics, management, marketing and technical courses. I began my career with Qwest (Mountain Bell) in 1978 in the business office. In 1980, I accepted the position of Manager - Residence Operations, where I was responsible for developing methods and procedures for billing and collections. In 1986, I moved to Strategy Development, where I was responsible for cost of service studies and economic regulatory issues. In 1994, I accepted the position of Manager – Regulatory Affairs in Colorado Regulatory where I was responsible for managing regulatory issues before the Colorado Public Utilities Commission. In 1997, I accepted the position of Director - Regulatory Affairs in Colorado Regulatory. In 2001, I accepted the position of Regional Director – Out of Region, where I was responsible for regulatory and legislative activities in a 14-state area. In 2002, I accepted my current position.

1 **Q. HAVE YOU PREVIOUSLY APPEARED BEFORE THE ARIZONA**
2 **CORPORATION COMMISSION OR OTHER PUBLIC UTILITY COMMISSIONS**
3 **AS A WITNESS IN REGULATORY PROCEEDINGS?**

4 A. I have not previously appeared before the Arizona Corporation Commission (the
5 "Commission") in any formal regulatory proceeding, but I have testified before the
6 Colorado Public Utilities Commission and the Illinois Commerce Commission.

7
8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. The purpose of my testimony is to provide the Commission with an overview and
10 explanation of the proposed settlement (the "Proposed Settlement Agreement") agreed to
11 by Qwest Corporation ("Qwest") and Commission Staff, and to describe how the
12 Proposed Settlement Agreement is in the public interest. The Proposed Settlement
13 Agreement is attached as Exhibit DZ-1.

14
15 **OVERVIEW OF PROPOSED SETTLEMENT AGREEMENT**

16
17 **Q. PLEASE DESCRIBE THE THREE DOCKETS ADDRESSED IN THE PROPOSED**
18 **SETTLEMENT AGREEMENT.**

19 A. The Proposed Settlement Agreement resolves certain dockets currently pending before the
20 Commission, specifically Docket No. RT-00000F-02-0271 (the "252(e) Unfiled
21 Agreements Docket"); Docket No. T-00000A-97-0238 (the "271 Subdocket"); and
22 Docket No. T-0151B-02-0871 (the "Order to Show Cause" or "OSC"). The Commission
23 established the 252(e) Unfiled Agreements Docket to consider allegations that Qwest had
24 violated Section 252(e) of the Telecommunications Act of 1996 (the "Act") by not
25 submitting to the Commission for review and approval certain agreements reached with
26 competitive local exchange carriers ("CLECs"). Additionally, the Commission created

1 the 271 Subdocket to address allegations that settlement agreements between Qwest and
2 certain CLECs had improperly impeded the Commission's evaluation of Qwest's
3 application under Section 271 of the Act. Finally, the Commission opened the Order to
4 Show Cause as a result of allegations that Qwest failed to implement the wholesale rates
5 ordered in Decision No. 64922 within a reasonable time period, without first notifying or
6 obtaining the approval of the Commission.

7
8 **Q. PLEASE PROVIDE AN OVERVIEW OF THE PROPOSED SETTLEMENT**
9 **AGREEMENT.**

10 A. The Proposed Settlement Agreement represents a balanced approach to accommodate the
11 interests asserted by the Staff, CLECs, and RUCO in each of the three dockets that are the
12 subject of the Settlement. The Proposed Settlement Agreement also reflects substantial
13 compromise and concessions of Qwest's positions in these cases. That is, the Proposed
14 Settlement Agreement accounts for the interests of the Staff and RUCO in providing for
15 over \$11 million in payments to the State of Arizona in the form of payments to the State
16 Treasury, as well as contributions for targeted benefits of Arizona telecommunications
17 consumers. The Proposed Settlement Agreement also accedes to interests asserted by the
18 CLECs in the Section 252(e) case and grants them substantial credits for wholesale
19 services purchased under their interconnection agreements within the scope of Section
20 251(b) and (c).

21
22 On the other hand, and as discussed further below, Qwest is waiving substantial rights in
23 order to settle these cases. As an example, in the Section 252(e) case, a CLEC requesting
24 to receive the same benefits from the terms of another CLEC's interconnection agreement
25 also must assume the same related obligations provided by the other CLEC under the
26 agreement. These obligations may include assuming the same volume commitments and

1 making the same payments as Eschelon and McLeod did under their agreements. Further,
2 some of the credits provided to Eschelon were premised upon Eschelon receiving the
3 "UNE-Star" product and the use of a manual billing system. In the Proposed Settlement
4 Agreement, Qwest would not require CLECs to assume the same obligations as Eschelon
5 and McLeod to receive the credits.

6
7 Qwest anticipates that CLECs may comment that the Proposed Settlement Agreement
8 should provide credits in addition to those offered in the Settlement. In Qwest's view,
9 such comments do not account for the substantial concessions Qwest has made in the
10 Proposed Settlement Agreement, because CLECs may not be able to demonstrate that they
11 satisfy the criteria necessary to obtain any of the credits that Qwest already is offering
12 under the Proposed Settlement Agreement. In other words, the credits offered under the
13 Proposed Settlement Agreement should not be considered as the minimum that Qwest
14 would have to provide as a result of this case; rather, the credits contained in the Proposed
15 Settlement Agreement represent very large concessions by Qwest. I will also explain in
16 this testimony why Qwest offers some credits as part of the Proposed Settlement
17 Agreement but will not offer others that CLECs have sought in the Section 252(e) case.

18
19 The Proposed Settlement Agreement also requires Qwest to continue its current
20 procedures and processes instituted prior to the Settlement to ensure compliance with its
21 Section 252 obligations and timely implementation of cost docket rates. Qwest also
22 commits to submit to the Commission settlement agreements in any Commission dockets
23 of general application. The Proposed Settlement Agreement also provides for regulatory
24 monitoring of Qwest's compliance mechanisms under Section 252(e) and of Qwest's
25 wholesale cost docket implementation. These compliance provisions reflect Qwest's
26 strong commitment to its regulatory obligations and regard for regulatory processes.

1 Further, if the Proposed Settlement Agreement is approved, Qwest would dismiss the cost
2 docket appeal before the federal district court, which also could result in significant
3 benefits for CLECs.

4 **RECITALS**

5 **Q. WHAT IS THE IMPORTANCE OF THE RECITALS IN THE PROPOSED**
6 **SETTLEMENT AGREEMENT?**

7 A. Similar to many agreements, the Recitals in the Proposed Settlement Agreement provide
8 the context in which the parties negotiated and agreed upon a resolution of the cases.
9 Thus, the Recitals first summarize the three dockets at issue. These Recitals go further,
10 however, to provide Qwest's assurances, without admitting any wrongdoing in these
11 cases, of its intention and policy to conduct its business in Arizona with integrity and with
12 regard and respect for regulatory processes. The Recitals also pledge the Company's
13 commitment "to comply with and to address the Commission's stated concerns that Qwest
14 is to comply with the filing requirements of Section 252(e) of the Telecommunications
15 Act, implement cost docket decisions in a timely manner, and apprise the Commission of
16 any settlement with a telecommunications carrier that would result in the carrier not
17 participating in any generic docket of industry-wide general concern before the
18 Commission."

19 **CASH PAYMENTS AND VOLUNTARY CONTRIBUTIONS**

20
21 **Q. PLEASE OUTLINE THE PAYMENTS THAT QWEST WILL MAKE AS PART**
22 **OF THE PROPOSED SETTLEMENT AGREEMENT.**

23 A. Qwest will make a total of \$11.197 million in payments to the State of Arizona and its
24 citizens. The \$11.197 million has been allocated such that \$5,197,000 will be paid to the
25 State Treasury within 30 days from the effective date of the Commission's decision
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approving the Proposed Settlement Agreement,¹ and \$6,000,000 will be contributed toward economic development, educational, and infrastructure investment projects for the welfare of Arizona consumers and telecommunications.

Q. PLEASE EXPLAIN THE APPORTIONMENT OF THE \$5,197,000 CASH PAYMENT TO THE STATE TREASURY.

A. The Proposed Settlement Agreement apportions the \$5,197,000 payment to each docket as follows: (1) \$5,000,000 for the 252(e) Unfiled Agreements Docket and the 271 Subdocket, (2) an additional \$47,000.00 for a portion of the 252(e) Unfiled Agreements Docket, and (3) \$150,000 for the Order to Show Cause case.

The \$5,000,000 payment addresses the Staff's allegations regarding the principal agreements at issue in the Section 252(e) case, particularly the Eschelon and McLeod agreements. The \$5 million also is attributable to the Staff's case in the 271 Subdocket addressing certain settlement provisions in which CLECs agreed to withdraw from proceedings before the Commission, including the 271 Docket. The \$47,000 payment addresses other agreements the Staff alleges should have been filed, where the Staff did not view Qwest's actions as intentional or willful. This is the penalty recommended by Staff with respect to these agreements. See Prefiled Testimony of Marta Kalleberg, Executive Summary (February 28, 2003). Finally, the Staff and Qwest stipulated to a \$150,000 payment to account for the Staff's allegations in the Order to Show Cause case.

¹ The Proposed Agreement defines the "effective date" as the date by which the Commission's decision approving the Agreement becomes final under A.R.S. § 40-253, including the expiration of time periods for the filing and consideration of any application for rehearing.

1 **Q. WHAT IS THE PURPOSE OF APPORTIONING \$6,000,000 TO SPECIFIC**
2 **TELECOMMUNICATIONS PROJECTS?**

3 A. Of the \$11.197 million, \$6,000,000 will be contributed to any of three categories:
4 (1) Section 501(c)(3) organizations or other State-funded programs involved in education
5 and/or economic development; (2) educational programs designed to promote a better
6 understanding of telecommunications issues by Arizona consumers; and (3) infrastructure
7 investment in unserved and/or underserved areas in Arizona. Such infrastructure
8 investment may include the development of further route diversity for homeland security
9 and 911 services, as well as investments that further the general welfare or safety of
10 consumers, or investments in advanced services.

11
12 The allocation of monies to these categories reflects an intent that monies be utilized for
13 projects targeted to promote specific interests of Arizona ratepayers.

14
15 **Q. HOW WILL THE ECONOMIC DEVELOPMENT, EDUCATIONAL, OR**
16 **INFRASTRUCTURE INVESTMENT PROJECTS BE SELECTED?**

17 A. Generally, Qwest and the Staff will collaborate to propose specific programs and
18 infrastructure investments, which will be subject to the ultimate decision of the
19 Commission. The process for selecting specific projects is outlined in Section 2, Sub-
20 paragraph 3 on pages 4-6 of the Proposed Settlement Agreement. First, the parties would
21 request the Commission to determine the percentage allocation among the three categories
22 of contributions: education, economic development, and infrastructure investment. The
23 percentage for any category can be from 0% to 100%. Qwest will subsequently provide a
24 list of projects for each category within 30 days of the effective date of the Commission's
25 approval of the Proposed Settlement Agreement. The Staff will have another 30 days to
26 provide its proposed projects. Further, the Commission may designate specific projects.

1 See Proposed Settlement Agreement at page 4. Within 180 days of the approval of the
2 Proposed Settlement Agreement, Qwest and Staff are to agree upon the projects to be
3 funded. If the Staff and Qwest cannot agree, then the matter will be brought to the
4 Commission for a determination.

5
6 **Q. WHAT TYPES OF PROJECTS ARE PERMITTED WITHIN THE CATEGORY**
7 **OF “INFRASTRUCTURE INVESTMENTS?”**

8 A. This category includes investments in “Unserved” or “Underserved” areas in Arizona,
9 investments to further route diversity for homeland security and 911 services, investments
10 that promote the general welfare or safety of consumers, or investments in advanced
11 services. The term “Unserved Area” is defined to include areas outside of Qwest’s current
12 exchange boundaries not currently served or not adequately served by any wireline service
13 provider, and other areas as determined or approved by the Commission. “Underserved
14 Area” means any area within Qwest’s current exchange boundaries but outside the Base
15 Rate Area, which does not have Qwest wireline telephone facilities available.

16
17 This category is intended is to be quite broad in its application and reflects a variety of
18 interests expressed by the Commissioners, the Staff and RUCO, concerning the provision
19 of services to remote or inadequately served areas, homeland security, and broadband
20 services.

21
22 **Q. WHAT IS THE SCHEDULE FOR INITIATING APPROVED PROJECTS?**

23 A. The Proposed Settlement Agreement requires Qwest to make contributions into projects
24 that do not require construction or development of new facilities or programs within 60
25 days of the approval of such projects. In other words, if the contribution is simply a cash
26 payment, Qwest will do so within 60 days. If the project requires new construction or

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development, then Qwest will initiate such investments within 180 days of approval, barring circumstances outside of Qwest's control, such as right-of-way or permit issues.

Q. DOES THE PROPOSED SETTLEMENT AGREEMENT PROVIDE FOR ADJUSTMENT OF THE ALLOCATIONS INTO THE CONTRIBUTION CATEGORIES?

A. Yes. If Qwest has yet to expend funds or has not contractually committed funds to an approved project, the Commission or the Director of Utilities may revise the allocations on a project-by-project basis.

Q. IS THERE A POSSIBILITY THAT THE AMOUNT OF THE CONTRIBUTIONS TO EDUCATIONAL, ECONOMIC DEVELOPMENT, OR INVESTMENT PROJECTS COULD BE MORE THAN \$6,000,000?

A. Yes. The Proposed Settlement Agreement sets minimum amounts of credits that Qwest must grant to CLECs under Sections 3, 4, and 5. If Qwest does not extend credits up to the minimum amounts, then Qwest will contribute the difference to the educational, economic, or infrastructure investment projects as selected under the same procedure outlined above. These additional contributions are subject to withholding if a CLEC does not execute a release and files claims within a year of the effective date of approval of the Proposed Settlement Agreement. This withholding allows Qwest to retain funds to satisfy CLEC claims asserted outside of the Proposed Settlement Agreement. See Proposed Settlement Agreement.

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CLEC CREDITS

18 **Q. PLEASE OUTLINE THE CREDITS OFFERED TO CLECS AS PART OF THE**
19 **PROPOSED SETTLEMENT AGREEMENT.**

20 A. As detailed below, Qwest will issue three types of one-time credits to eligible CLECs: (1)
21 credits as measured by 10% of a CLEC's purchase of Section 251(b) and (c) services
22 under the Act through their interconnection agreement with Qwest or through Qwest's
23 SGAT over an 18-month period from January 1, 2001 through June 30, 2002 (See Section
24 3 of the Proposed Settlement Agreement); (2) credits as measured by \$2 per UNE-P or
25 unbundled loop from July 1, 2001 through February 28, 2002, offset by actual receipts of
26 terminating Qwest intraLATA toll traffic (See Section 4 of the Proposed Settlement
Agreement); and (3) credits as measured by \$13 or \$16 per UNE-P line per month from
November 2000 through February 2002, offset by a CLEC's billings to interexchange
carriers for originating and terminating switched access (See Section 5 of the Proposed
Settlement). Under the Proposed Settlement Agreement, the CLEC's are required to
execute a release of claims arising from the 252(e) Docket and 271 Subdocket in order to
obtain the credits.

18 **Q. STARTING WITH THE 10% CREDIT UNDER SECTION 3, WHAT INTEREST**
19 **DOES THAT CREDIT ADDRESS?**

20 A. The credits offered under Section 3 address the allegations made in the Section 252(e)
21 case that Eschelon and/or McLeod received payments from Qwest equal to 10% of their
22 purchases over a period of time.

23
24 **Q. DOES THE 10% CREDIT REPRESENT A COMPROMISE OF THE RIGHTS**
25 **ASSERTED IN THE SECTION 252(E) CASE?**

26 A. Yes, if the Proposed Settlement Agreement is approved and CLECs request the credits

1 offered under Section 3, Qwest will have compromised substantial rights and defenses that
2 it asserted in this case. As more fully explained in Qwest's evidence and legal briefing in
3 the 252(e) docket, any CLEC requesting the benefits of an interconnection provision must
4 also assume all related obligations. Thus, assuming for the purposes of this Proposed
5 Settlement only that the McLeod and Eschelon agreement constituted interconnection
6 agreements subject to opt in rights, requesting CLECs must assume the same obligations
7 as Eschelon and McLeod did in the subject agreements. These include making the same
8 payments that Eschelon and McLeod did, as well as assuming the same volume
9 obligations. By not requiring CLECs to make the same payments as Eschelon and
10 McLeod and assume other related terms, Qwest has substantially compromised its
11 position in this case. As stated earlier in this testimony, this is the reason that the credits
12 issued as part of the Proposed Settlement Agreement should not be viewed as the
13 minimum liabilities for which Qwest may be responsible in this case. Rather, this credit
14 represents a very large concession on the part of Qwest.

15
16 **Q. PLEASE EXPLAIN THE 18-MONTH TIME PERIOD FOR THE 10% DISCOUNT**
17 **CREDIT UNDER SECTION 3.**

18 A. The 18-month period also represents a significant compromise and concession by Qwest.
19 The Eschelon agreement at issue had a duration of 15 and ½ months, from November 15,
20 2000 through February 28, 2002. The written McLeod agreements offered as evidence in
21 the 252(e) case have a starting date for the purchases of services as January 1, 2001.
22 Payments to McLeod stopped after the third quarter of 2001, and Qwest and McLeod
23 entered into a settlement agreement in September of 2002 (tendered to the Commission
24 for its information soon after execution) providing that without any admissions as to the
25 terms of the Qwest/McLeod contractual arrangements, all such arrangements terminated
26 as of June 30, 2002. Thus, the 18-month period is longer than Eschelon or McLeod

1 arguably received any of the alleged payments at issue in this case.
2

3 **Q. WHAT IS THE REASON FOR APPLYING THE 10% CREDIT TO PURCHASES**
4 **OF SECTION 251(b) AND (c) SERVICES?**

5 A. This testimony is not intended to offer any legal conclusions or analysis concerning
6 Qwest's positions in the cases at issue. Such matters are not within my area of expertise,
7 and are best reserved for briefing. However, this testimony is intended to explain Qwest's
8 settlement reasoning, namely that the Section 252(e) filing requirement extends only to
9 the interconnection services delineated under Section 251(b) and (c) of the Act, and that
10 there are no Section 252(e) filing obligations with regard to non-Section 251 services.
11 Further, it is Qwest's view that CLEC opt in rights extend only to those services that are
12 within an "interconnection agreement," which again extends to only Section 251 services.
13 Thus, CLECs have no opt in rights to non-Section 251 services.
14

15 Further, as stated above, Qwest is already making large concessions by offering credits
16 based upon Section 251 services without also requiring CLECs to assume the same
17 obligations assumed by Eschelon and McLeod in their agreements. It is a reasonable
18 settlement to draw the lines for credits at Section 251 services.
19

20 **Q. PLEASE EXPLAIN THE BASIS FOR THE \$2 ACCESS LINE CREDITS IN**
21 **SECTION 4 OF THE PROPOSED SETTLEMENT AGREEMENT.**

22 A. This credit is premised upon allegations regarding the July 3, 2003 letter agreement
23 between Eschelon and Qwest. A paragraph on page 2 of that letter addresses billings by
24 Eschelon for its termination of Qwest's intraLATA toll to customers served by an
25 Eschelon switch. Similar to that letter agreement, Qwest will provide a credit of \$2 per
26 month per UNE-P or unbundled loop purchased by a CLEC from July 1, 2001 through

1 February 28, 2002, which is the approximate date of the agreement going forward until
2 the letter agreement's termination, which was executed on March 1, 2002.

3
4 **Q. WHAT IS THE BASIS OF THE OFFSETS FROM THE \$2 CREDIT?**

5 A. The basis for the credit is to compensate up to \$2 for revenues to be paid by Qwest for
6 Eschelon's termination of intraLATA toll. Thus, if a CLEC has received payments from
7 Qwest for the termination of intraLATA toll, then the CLEC has been compensated up to
8 that extent, and the \$2 credits should be offset by the amount of such collections from
9 Qwest. The Proposed Settlement Agreement in Section 4 (A) – (D) establishes a
10 notification and discovery process for the calculation of the credits and offsets.

11
12 **Q. DOES THE \$2 CREDIT REPRESENT A COMPROMISE AND CONCESSION BY**
13 **QWEST FOR THE PURPOSES OF THE PROPOSED SETTLEMENT**
14 **AGREEMENT?**

15 A. Yes. Again, as an issue of law, subject to dispute and further litigation on appeal, Qwest
16 maintained that compensation for termination of intraLATA toll is not a Section 251(b) or
17 (c) service, and is outside of the types of provisions that would require filing under
18 Section 252(e) and outside of CLEC opt in rights under Section 252(i). In order to
19 achieve a reasonable settlement of the parties' positions in these cases, however, Qwest
20 offered this credit, representing another major concession by Qwest in favor of the
21 CLECs.

22
23 **Q. PLEASE EXPLAIN THE \$13 AND \$16 UNE-P CREDITS OFFERED TO CLECS**
24 **UNDER SECTION 5 OF THE PROPOSED SETTLEMENT AGREEMENT.**

25 A. Again, without offering a legal opinion, these credits account for the allegations regarding
26 provisions in two Eschelon agreements, one dated November 15, 2000, and the other

1 July 3, 2003 (which is the same letter agreement discussed above regarding the \$2
2 credits). The background of the provisions at issue here is that Eschelon was receiving the
3 type of UNE-P product known as "UNE-Star," or as applied to Eschelon, "UNE-E."
4 UNE-Star also involved the provisioning to Eschelon of manual daily usage files from
5 which Eschelon determined its billings to interexchange carriers of switched access
6 charges for originating and terminating interexchange calls. Eschelon claimed that the
7 manual daily usage files were not accurate. The November 15, 2000 agreement resolves
8 this dispute by providing Eschelon a \$13 credit per UNE-Star line per month in any month
9 in which Qwest does not provide accurate daily usage information until a mechanized
10 process is in place. The July 3, 2001 agreement increased the credit to \$16 per month per
11 UNE-Star line. The credits under Section 5 of the Proposed Settlement Agreement
12 attempt to simulate the credits provided to Eschelon.

13
14 **Q. WHAT IS THE DURATION OF THE \$13 CREDIT AND OF THE \$16 CREDIT?**

15 A. The \$13 credit, offset by billings to IXC's for switched access, would apply from
16 November 2000 through June of 2001, and the \$16 credit, subject to offset, would apply
17 from July 2001 through February 2002. These time frames parallel the dates of the two
18 agreements between Qwest and Eschelon.

19
20 **Q. WHAT IS THE REASON FOR APPLYING OFFSETS TO THE \$13 AND \$16**
21 **CREDITS?**

22 A. As discussed above, the credits account for switched access billing. And, as stated in the
23 July 3 letter agreement on the second page, the credit was actually implemented such that
24 Eschelon's switched access billings to IXC's for the UNE-E lines served as an offset to the
25 credits. Thus, CLECs requesting this credit must offset the billings to their IXC's. If a
26 CLEC was not billing IXC's for switched access over their UNE-P lines, then the CLEC

1 should not receive any credit to reflect lost billings. The procedures for notification and
2 discovery of information necessary to calculate the credits and the offsets are set forth in
3 Section 5(A)-(D).

4
5 **Q. DO THE \$13 AND \$16 CREDITS REFLECT CONCESSIONS BY QWEST IN THE**
6 **PROPOSED SETTLEMENT AGREEMENT?**

7 A. Yes. It is Qwest's position that a CLEC requesting opt-in rights must be in a similar
8 position and assume the same obligations as the CLEC did under the subject agreement.
9 The Eschelon November 15, 2000 shows that a commitment by Eschelon to purchase \$15
10 million of telecommunications services was related to the payment of the \$13 and \$16
11 credits. Further, the credits were to end upon the conversion to a mechanized process for
12 the daily usage records. Other CLECs already had in place a mechanized process for
13 daily usage files. Qwest is not asserting the \$15 million volume commitment or the
14 manual records conditions as necessary criteria to receive this credit under the Proposed
15 Settlement Agreement.

16
17 **FUTURE COMPLIANCE**

18 **Q. DOES THE PROPOSED AGREEMENT ESTABLISH ANY INDEPENDENT**
19 **MEANS FOR MONITORING QWEST'S COMPLIANCE WITH ITS SECTION**
20 **252 OBLIGATIONS AND THE IMPLEMENTATION OF NEW WHOLESALE**
21 **COST DOCKET RATES?**

22 A. Yes. Qwest also will pay for an independent, third-party monitor, selected by the Director
23 of the Utilities Division, who will conduct an annual review of Qwest's Wholesale
24 Agreement Review Committee. Section 8 at 13-14. Qwest also commits to continue its
25 web-based training program for new and existing employees in certain organizations for a
26 three-year period. Section 9 at 14. Additionally, Qwest must hire an independent,

1 third-party consultant, selected by the Director of Utilities, to conduct assessments of and
2 recommend improvements to Qwest's wholesale rate implementation process. Section 12
3 at 15-16. Both the consultant and the monitor shall be retained for a maximum period of
4 three years. Additionally, Qwest will continue its internal cost docket governance team
5 for three years. Section 14 at 16-17.

6
7 **Q. PLEASE EXPLAIN QWEST'S COMPLIANCE PROCESSES TO IMPLEMENT**
8 **NEW WHOLESALE COST DOCKET RATES.**

9 A. Under Section 14 of the Proposed Settlement Agreement, Qwest and Staff must meet one
10 year from the effective date of a Commission decision approving the Proposed Settlement
11 Agreement to discuss the status of Qwest's wholesale implementation in Arizona, current
12 industry expectations regarding such implementation, and Qwest's business practices
13 concerning both wholesale rate implementation and the negotiation of interconnection
14 agreements.

15
16 In its OSC post-hearing brief filed on July 15, 2003, Qwest committed to certain measures
17 ensuring that delays in wholesale rate implementation were not repeated. As of that filing,
18 Qwest had already:

- 19 • Engaged an outside consultant to provide recommendations for
20 automation of many processes associated with cost docket
21 implementation;
- 22 • Implemented a mechanized solution to shorten the time it took to
23 map individual CLEC contracts in the 1st Quarter 2003;
- 24 • Designated a Program Management Office to oversee the
25 implementation process, ensuring that implementation schedules
26 were adhered to and opportunities for process improvement would

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be explored and acted upon;

- Established a Cost Docket Governance Team comprised of executive level personnel from the organizations within the Company with primary involvement and responsibility for cost docket implementation; and
- Modified its communications process to require increased correspondence with Staff and all wholesale customers at critical process points, including:
 1. Immediately after the issuance of a final Commission order;
 2. Immediately after rate sheets are updated; and
 3. Immediately prior to the introduction of new Commission-approved rates.

Q. DOES THE PROPOSED SETTLEMENT AGREEMENT PROVIDE FOR TIME PERIODS WITHIN WHICH QWEST WILL IMPLEMENT NEW COST DOCKET RATES?

A. Yes. The Proposed Settlement Agreement also establishes a process for establishing final and specific wholesale rates, and a specific 60-day time frame in which Qwest has agreed to implement such rates on a going-forward basis. Any request for additional time requires that good cause be shown and is subject to Commission approval. See Section 15 at 17-18.

Q. PLEASE EXPLAIN QWEST'S COMMITMENT TO PROVIDE TO THE COMMISSION SETTLEMENT AGREEMENTS THAT INCLUDE WITHDRAWAL BY A CLEC FROM A GENERIC DOCKET.

A. The primary issue raised in the 271 Subdocket was the propriety of CLEC settlement

1 agreements in which the CLEC also agreed to withdraw from a pending generic docket
2 such as the 271 proceeding. It is Qwest's understanding that the concern expressed by the
3 Commission and the Staff is that the Commission should be aware of any agreement
4 resulting in a CLEC no longer participating or providing input into a docket of industry-
5 wide importance.

6
7 Qwest agrees in the Proposed Settlement Agreement to file with the Commission any
8 future settlement agreements reached in Commission dockets of general application
9 within 10 days of execution. This includes the filing of a written statement by Qwest each
10 year attesting to the fact that all such agreements have either been filed or do not exist.
11 This measure will prevent any future questions concerning the propriety of Qwest
12 settlements in such dockets and will foster continued competition among all
13 telecommunication carriers.

14 15 **COST DOCKET APPEAL**

16 **Q. DOES THE PROPOSED SETTLEMENT AGREEMENT OBLIGATE QWEST TO**
17 **DISMISS THE COST DOCKET APPEAL?**

18 A. Yes. If the Proposed Settlement Agreement is approved, Qwest will file a motion
19 requesting the federal district court to dismiss with prejudice the appeal of the
20 Commission's cost docket order issued on June 12, 2002, Decision No. 64922.

21
22 **Q. DOES THE DISMISSAL OF THE COST DOCKET APPEAL PROVIDE**
23 **BENEFITS TO THE OTHER PARTIES IN THE CASE?**

24 A. The parties to the appeal will avoid the expense of litigating the appeal. And, dismissal
25 will provide certainty of future rates. But in addition, by withdrawing its appeal, Qwest
26 will forego its ability to request the federal court to review the cost docket decision. A

1 successful appeal by Qwest may have resulted in higher rates for CLEC purchases of
2 unbundled network elements in the future.

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CONCLUSION

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Q. IS THE PROPOSED SETTLEMENT AGREEMENT IN THE PUBLIC 6 INTEREST?

7

A. Yes. The Proposed Settlement Agreement represents a reasonable compromise between
8 the positions of the parties and provides significant advantages for CLECs, consumers,
9 and the State of Arizona. The Proposed Settlement Agreement imposes significant
10 financial obligations on Qwest totaling approximately \$21,000,000.00. This amount
11 clearly is substantial, and the monies and credits will be allocated to serve each of the
12 relevant interests asserted in these cases.

13

14

Specifically, the voluntary contributions to be made by Qwest -- under the direction of the
15 Commission -- further create an opportunity for the Commission to address pressing
16 issues affecting all carriers and customers throughout the State, including "unserved" and
17 "underserved" territories.

18

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Additionally, eligible CLECs will receive substantial credits quickly upon Commission
20 approval of the Proposed Settlement Agreement. Formulas for calculating these credits
21 have been established to reduce, if not eliminate, disputes about amounts owed.
22 Eligibility for CLECs is simple and only requires a CLEC to demonstrate that it was
23 certificated and operating in Arizona during a defined period of time. CLECs do not, for
24 example, have to meet several of the terms and conditions imposed by the subject
25 agreements upon Eschelon and McLeod in the dockets at issue.

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The Proposed Settlement Agreement sets clear deadlines and creates processes for the implementation of wholesale rates. Mechanisms for the Commission's monitoring of wholesale cost docket implementation and for Section 252 agreement review also are established.

In sum, the Proposed Settlement Agreement imposes very significant and costly obligations upon Qwest, and at the same time resolves contentious pending issues and allows all parties to focus on the future and improved development of competitive telecommunications services in Arizona.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

PHX/1451084.2/67817.295

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, CHAIRMAN
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

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

DOCKET NO. RT-00000F-02-0271

IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S)
COMPLIANCE WITH SECTION 271 OF)
THE COMMUNICATIONS ACT OF 1996)

DOCKET NO T-00000A-97-0238

ARIZONA CORPORATION COMMISSION)
Complainant,)
V)
QWEST CORPORATION,)
Respondent.)

DOCKET NO. T-01051B-02-0871

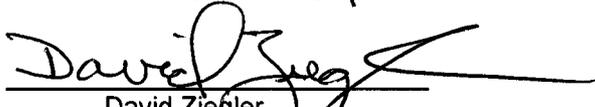
STATE OF ARIZONA)
COUNTY OF MARICOPA)

AFFIDAVIT OF
DAVID ZIEGLER

David Ziegler, of lawful age being first duly sworn, deposes and states:

1. My name is David Ziegler. I am Assistant Vice President – Arizona Public Policy. I have caused to be filed written testimony in support of the proposed Settlement Agreement on behalf of Qwest Corporation in Docket No. RT-00000F-02-0271/T-00000A-97-0238/T-01051B-02-0871.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.


David Ziegler

SUBSCRIBED AND SWORN to before me this 14th day of August, 2003


Notary Public residing at
Phoenix, Arizona

My Commission Expires: 9/18/04



EXHIBIT DZ-1

SETTLEMENT AGREEMENT

Qwest Corporation ("Qwest" or "the Company") and the Arizona Corporation Commission Staff ("Staff"), ("the Parties") hereby agree to a settlement (the "Settlement Agreement" or "this Agreement") of certain Dockets currently pending before the Arizona Corporation Commission ("Commission"), specifically Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act); Docket No. T-00000A-97-0238 (Subdocket) (the 271 Subdocket which addressed allegations that Qwest interfered with the 271 regulatory process); and Docket No. T-01051B-02-0871 (the Order to Show Cause ("OSC") for not implementing Commission approved wholesale rates on a timely basis). These Dockets shall be collectively referred to in this Agreement as the "Litigation." The following terms and conditions are intended to resolve all of the issues raised in or associated with the Litigation.

RECITALS

WHEREAS, the Parties desire to adopt this Agreement subject to Commission approval;

WHEREAS, by adopting this Agreement, the Parties intend to settle and terminate the Litigation in a manner that is fair and reasonable;

WHEREAS, the 252(e) Unfiled Agreements Docket involved allegations that Qwest violated Section 252(e) of the Telecommunications Act by failing to file for Commission review and approval certain agreements with Competitive Local Exchange Carriers ("CLECs") operating in the state of Arizona;

WHEREAS, the 271 Subdocket involved allegations that Qwest improperly entered into settlement agreements with CLECs that resulted in the nonparticipation by such CLECs in the Commission docket evaluating Qwest's application under Section 271 of the Telecommunications Act, all without the Commission's knowledge; and that Qwest thereby interfered with the 271 regulatory process;

WHEREAS, the Order to Show Cause involved allegations that Qwest failed to implement the wholesale rate changes ordered in Decision No. 64922 within a reasonable period of time, that Qwest failed to notify the Commission of rate implementation delay, that Qwest failed to obtain Commission approval of the delay in implementation, and that Qwest's wholesale rate change system is unreasonably slow and inefficient;

WHEREAS, Qwest acknowledges, without admitting any wrongdoing, the concerns raised regarding the allegations which are the subject of the Litigation and expresses its regret over the events leading to the Litigation and, without admitting wrongdoing, Qwest states its intention to comply fully in the future with all written laws, rules, regulations and orders governing Qwest's conduct;

WHEREAS, Qwest avows that it is the policy and commitment of the Company to conduct all of its business affairs in the state of Arizona with integrity, honesty, in conformance with Arizona laws and regulations and with respect for the regulatory processes of the Commission.

WHEREAS, Qwest also acknowledges, without admitting any wrongdoing, concerns raised by the parties, including the Staff, regarding allegations that its behavior was designed to intentionally deceive and misrepresent certain facts before the Commission. Further, without admitting any wrongdoing, Qwest avows that the Company and its official representatives will not engage in fraudulent, deceptive or intentionally unlawful conduct in any matters pending before the Arizona Corporation Commission.

WHEREAS, Qwest acknowledges that Commission approval of this Settlement Agreement shall constitute a Commission Decision directing that Qwest implement the provisions of this Settlement Agreement which are intended to assure future compliance with respect to the filing requirements of Section 252(e) of the Telecommunications Act, to assure timely implementation of future cost dockets and to assure that Qwest files with the Commission any settlement agreement with a telecommunications carrier that would result in the carrier not participating in any generic docket of industry-wide general concern pending before the Commission and that violations of those provisions may be punished by contempt after notice and a hearing as provided by A.R.S. Section 40-424;

WHEREAS, as detailed in this Agreement, Qwest shall apply monies and issue credits to resolve the events leading to the Litigation, as well as implement procedures and accede to independent monitoring, thereby demonstrating the commitment of corporate management to comply with and to address the Commission's stated concerns that Qwest is to comply with the filing requirements of Section 252(e) of the Telecommunications Act, implement cost docket decisions in a timely manner, and apprise the Commission of any settlement with a telecommunications carrier that would result in the carrier not participating in any generic docket of industry-wide general concern before the Commission;

WHEREAS, while Qwest denies any wrongdoing, the parties agree that the terms and conditions of this Agreement, including but not limited to, the Cash Payment, Voluntary Contributions and Minimum Settlement Amount, are fair, reasonable and in the public interest;

WHEREAS, in consideration thereof, the Parties agree as follows:

TERMS AND CONDITIONS

1. CASH PAYMENT.

Qwest agrees to pay an Aggregate Cash Payment Amount of \$5,197,000.00. The Parties have agreed that the Aggregate Cash Payment Amount shall be attributable to each portion of the Litigation as follows:

1. \$5,000,000.00 for the Dockets addressing Qwest's compliance with Section 252(e) and Qwest's alleged interference with the 271 regulatory process;
2. \$47,000.00 for the Docket addressing Qwest's compliance with Section 252(e);
3. \$150,000 for the Docket dealing with Qwest's implementation of the new wholesale rates.

Qwest agrees to pay the Aggregate Cash Payment Amount to the State Treasurer within 30 days of the Effective Date of the Commission's Decision approving this Agreement.

2. VOLUNTARY CONTRIBUTIONS.

Qwest agrees to make Voluntary Contributions in an amount of \$6,000,000.00, or more as detailed below, in the following areas:

1. Section 501(c)(3) organizations or other State-funded programs involved in the areas of education and/or economic development;
2. Educational programs designed to promote greater understanding of telecommunications issues by Arizona consumers;
3. Infrastructure Investment, including investments in Unserved and Underserved areas in the State of Arizona. Any party to this Agreement may also propose other projects, which may include by way of illustration but are not limited to the following:

investments to further route diversity for homeland security and 911 services, investments that promote the general welfare or safety of consumers, or investments in advanced services. All parties shall have the right to argue in support of or opposition to any of the proposed projects before the Commission, if agreement cannot be reached. This provision is not intended to prohibit the Commission from designating specific projects.

Qwest's initial Voluntary Contribution shall be in the amount of \$6,000,000.00. This amount shall be subject to increase to the extent that the Minimum Settlement Amounts specified in Paragraphs 3 through 5 below are not reached, subject to Paragraph 6 below. Further, Qwest agrees that all such investments shall be in addition to any investments, construction or work already planned by Qwest.

Parties will request that the Commission determine the percentage allocation (e.g. from 0 to 100) of the Voluntary Contributions to be made for each of the three investment categories (i.e., education, economic development, and Infrastructure Investment) forthwith or the Commission may designate such responsibility to its Director of Utilities. The parties agree that, in order to have the process of allocations of voluntary contributions work as efficiently as possible, they will request that the Commission provide guidance on the allocation of funds among the categories prior to submission of the project lists by the parties. The Commission or Director of Utilities shall have the discretion to revise such allocations on a project by project basis to the extent Qwest has not already spent the allocated funds or has not contractually committed the funds to a project previously approved by the Commission. Additional amounts added through non-expenditure by Qwest of any portion of the Minimum Settlement Amounts in Paragraphs 3 through 5 below shall be handled in a like manner.

Qwest shall be required to provide a proposed list of projects in each investment category within 30 days of the Effective Date of the Commission's Decision approving the Settlement Agreement, or in the case of additional projects, its notification to the Commission that the Minimum Settlement Amounts have not been met. Any other signatory to this agreement may

provide a list of projects for any category within 60 days of the Effective Date, for Commission consideration and approval or in the case of additional projects, within 60 days of Qwest's notification to the Commission that the Minimum Settlement Amounts have not been met. Qwest shall also be required to provide Staff with such additional information on those projects as well as other projects identified by Staff, to allow Staff to make its determinations in an informed manner. Such information shall include data which allows Staff to establish that the projects are in addition to any construction and work already planned by Qwest.

Within each investment category, approved projects shall be determined by the mutual written agreement of the Director of the Commission's Utilities Division and Qwest's Arizona President within 180 days of the Effective Date of the Commission's Decision approving this Agreement. Allocation to additional projects as a result of Qwest's not meeting the Minimum Settlement Amounts specified in Paragraphs 3 through 5, shall be approved within 180 days of Qwest's notification to the Commission that the Minimum Settlement Amounts have not been met. In the event that the Director of the Commission's Utilities Division and Qwest's Arizona President cannot agree, the decision on such project shall be escalated to the Commission for decision. If the projects do not require any additional facilities, construction or development of new programs, Qwest shall make its investments in the approved projects within 60 days of their approval by the Director of the Commission's Utilities Division and Qwest's Arizona President, or approval by the Commission if agreement cannot be reached.

If an approved project requires Qwest to develop additional facilities or development of new programs, construction of such facilities and implementation of such programs shall commence no later than 180 days of the mutual agreement of the Director of the Commission's Utilities Division and Qwest's Arizona President, barring any circumstances outside of Qwest's control, including but not limited to, right-of-way ("ROW"), permits, environmental studies, archaeological studies, contract and/or lease negotiations or force majeure events, which shall

extend the above-referenced construction date. Any such extensions of time shall first be approved by the Commission's Director of Utilities.

For purposes of the Infrastructure Investment category, "Unserved Area" shall be defined as any area outside of Qwest's current exchange boundaries not currently served or not adequately served by any wireline telephone service provider and other areas as determined or approved by the Commission. "Underserved Area" shall be defined as any area within Qwest's current exchange boundaries but outside the Base Rate Area which does not have Qwest wireline telephone facilities available.

For purposes of "Underserved Areas", Qwest will be required to invest an incremental amount over and above what it otherwise would have invested (the base amount). Qwest agrees to provide Staff with the information required to verify that any of the proposed projects represent an incremental amount over and above what it would have invested otherwise. Qwest's current line extension and construction tariff would continue to apply to the development of infrastructure for the purpose of expending the Voluntary Contributions under this agreement.

3. DISCOUNT CREDITS

Qwest further agrees to issue a one-time credit to Eligible CLECs, equal to 10 percent of the total amount of services purchased under 47 U.S.C. Sections 251 (b) and (c) (as defined by the FCC for the relevant time period) through their interconnection agreements with Qwest or through Qwest's Statement of Generally Available Terms and Conditions ("SGAT") during the time period from January 1, 2001, through June 30, 2002. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between January 1, 2001 through June 30, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue such Discount Credits to all Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving the Settlement Agreement. To obtain the Discount Credit, an Eligible CLEC shall be required to execute a

release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The amount of the aggregate Discount Credits shall neither exceed \$8,910,000.00 nor be less than \$8,100,000.00. If the aggregate Discount Credits provided to Eligible CLECs are less than \$8,100,000.00 (Minimum Settlement Amount for purposes of this Paragraph 3), Qwest shall contribute a sum equal to the difference (i.e., \$8,100,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate Discount Credits are greater than \$8,910,000.00, Qwest shall provide the Discount Credits in the aggregate amount of \$8,910,000.00 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$8,910,000.00 equal to the percentage of that CLEC's claim for Discount Credits to the total claims of all CLECs for Discount Credits).

4. ACCESS LINE CREDITS.

Qwest further agrees to issue one-time credits to Eligible CLECs at the rate of \$2.00 per month for each UNE-P line or unbundled loop purchased by the CLEC from Qwest between July 1, 2001, through February 28, 2002, less amounts billed and collected by each Eligible CLEC from Qwest for terminating intraLATA toll on a monthly basis during that same time period. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between July 1, 2001 through February 28, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue these one-time Access Line Credits to all Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving the Settlement Agreement. To obtain the Access Line Credits, an Eligible CLEC shall be required to execute a release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the

agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The total amount of the Access Line Credits shall neither exceed \$660,000.00 nor be less than \$600,000.00. If the aggregate Access Line Credits provided to Eligible CLECs are less than \$600,000.00 (Minimum Settlement Amount for purposes of this Paragraph 4), Qwest shall contribute a sum equal to the difference (i.e., \$600,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate Access Line Credits issued exceed \$660,000.00, Qwest shall provide Access Line Credits in the aggregate amount of \$660,000.000 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$660,000.00 equal to the percentage of that CLEC's claim for Access Line Credits to the total claims of all CLECs for Access Line Credits).

The following procedures shall apply in determining the amount of Access Line Credits to be provided by Qwest to CLECs:

- A. Within 30 days of the Effective Date of the Commission's Decision Approving the Settlement Agreement, Qwest will inform each CLEC operating in Arizona that purchased UNE-P or unbundled loops from Qwest from July 2001 through February 2002, that it may be eligible to receive a per UNE-P or per unbundled loop credit for terminating IntraLATA switched access, to be offset by collections from Qwest for the CLEC's terminating switched access. Qwest's notice will include the procedures for CLECs to respond as specified below.
- B. Within 60 days of being informed by Qwest of its possible eligibility, each CLEC will submit to Qwest information and documentation supporting the following:
 - i. The average number of UNE-P lines and unbundled loops leased by the CLEC in service per month from July 2001 through February 2002.

- ii. The amounts the CLEC actually collected from Qwest for terminating intraLATA switched access for the UNE-P lines or unbundled loops in service, for each month from July 2001 through February 2002.
- C. Within 60 days of the date Qwest receives the information specified in Subparagraph B from the CLEC, Qwest shall inform the CLEC of the amount of the credit it is due (the \$2 per line per month amounts less the offset calculated based upon the above information).
 - i. Within 30 days of the date Qwest informs the CLEC of the amount of the credit it is due, Qwest shall credit to each CLEC that has executed a release of any and all claims against Qwest the amount that the CLEC is actually entitled to receive.
- D. If a CLEC fails to reasonably comply by not providing Qwest with any of the information necessary to determine the appropriate amount of credit, the CLEC will not be entitled to receive credits under this Paragraph. Notwithstanding the above, if the information is in the possession of Qwest, Qwest shall not require the CLEC to provide it again in order to receive the credit. If the information is not available to either Qwest or the CLEC, the CLEC will receive the amount that Qwest actually paid Eschelon each month, which is \$0.96 per line per month. Any disputes arising from this subpart shall be submitted to the Commission Staff for resolution.

5. UNE-P CREDITS.

Qwest further agrees to provide one-time credits to Eligible CLECs against future purchases for each month Qwest did not provide accurate daily usage information. These UNE-P credits shall be made at the rate of \$13 per month for each UNE-P line purchased by CLECs through their interconnection agreements with Qwest or Qwest's SGAT from November 1, 2000,

through June 30, 2001 and \$16 per month for each UNE-P line purchased by CLECs through their interconnection agreements with Qwest or through Qwest's SGAT from July 1, 2001, through February 28, 2002, less the amounts actually billed by these CLECs to interexchange carriers for switched access on an aggregate basis for such UNE-P lines during these monthly periods divided by the average number of UNE-P lines in service for that month. Eligible CLECs shall include all CLECs certificated and operating in the State of Arizona between November 1, 2000 through February 28, 2002, with the exception of the following carriers and their affiliates: Eschelon Telecom, Inc. and McLeodUSA, Inc. Qwest shall issue the UNE-P Credits to Eligible CLECs within 180 days of the Effective Date of the Commission's Decision approving this Settlement Agreement. To obtain the UNE-P Credits, an Eligible CLEC shall be required to execute a release of any and all claims of the CLEC and its affiliates, subsidiaries, and parents against Qwest, arising out of any of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket).

The total amount of the UNE-P Credits shall neither exceed \$550,000.00 nor be less than \$500,000.00. If the aggregate UNE-P Credits issued to Eligible CLECs are less than \$500,000.00 (Minimum Settlement Amount for purposes of this Paragraph 5), Qwest shall contribute a sum equal to the difference (i.e., \$500,000.00 less the calculated amount) as an additional contribution in the manner provided under Paragraph 2 (Voluntary Contributions) and Paragraph 6 (Additional Voluntary Contributions) of this Agreement. If the aggregate UNE-P credit exceeds \$550,000.00, Qwest shall provide UNE-P Credits in the aggregate amount of \$550,000.00 to all Eligible CLECs ratably (i.e., each CLEC receives that portion of the \$550,000.00 equal to the percentage of that CLEC's claim for UNE-P Credits to the total claims of all CLECs for UNE-P Credits).

The following procedures shall apply to determining the amount of UNE-P Credits to be provided by Qwest to the CLECs:

- A. Within 30 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest will inform each CLEC operating in Arizona that leased UNE-P from Qwest from November 2000 through February 2002, that it may be eligible to receive a per UNE-P Credit for each month Qwest did not provide accurate daily usage information, to be offset by actual billings to interexchange carriers ("IXCs") for switched access. Qwest's notice will include the procedures for CLECs to respond as specified below.
- B. Within 60 days of being informed by Qwest of its possible eligibility, each CLEC will submit to Qwest information and documentation supporting the following:
- i. The months from November of 2000 to February, 2002 that the CLEC believes it did not receive accurate daily usage information from Qwest.
 - ii. The reasons that the CLEC believes that the daily usage information was inaccurate.
 - iii. The average number of UNE-P lines leased by the CLEC in service for each such month that it believes it did not receive accurate daily usage information.
 - iv. The aggregate amount the CLEC actually billed interexchange carriers for switched access originated and terminated through such UNE-P lines for each month in which the CLEC believes Qwest's daily usage information was inaccurate.
- C. Within 60 days of the date Qwest receives the information specified in Subparagraph B from the CLEC, Qwest shall inform the CLEC of the amount of the credit it is due (the \$13 or \$16 per line per month amounts less the offset calculated based upon the above information) or the reasons that Qwest believes that the DUF files that it provided to the CLEC were accurate.

- i. Within 30 days of the date Qwest informs the CLEC of the amount of the credit it is due, Qwest shall credit to each CLEC that has executed a release of any and all claims against Qwest the amount that the CLEC is actually entitled to receive after adjusting for any offsets attributable to the CLEC; or
 - ii. If Qwest has informed the CLECs that it believes that the DUF files were accurate, the CLEC shall have 30 days to respond to Qwest. Qwest shall then have the burden of proving that the DUF files were accurate.
- D. If a CLEC fails to reasonably comply by not providing Qwest with any of the information necessary to determine the appropriate amount of credit, the CLEC will not be entitled to receive credits under this Paragraph. Notwithstanding the above, if the information is in the possession of Qwest, Qwest shall not require the CLEC to provide it again in order to receive the credit. Any disputes arising from this subpart shall be submitted to the Commission Staff for resolution.

6. ADDITIONAL VOLUNTARY CONTRIBUTIONS.

Qwest agrees that if the credits issued under Paragraphs 3 through 5 above, are less than the respective Minimum Settlement Amounts required under these same Paragraphs of this Agreement, Qwest shall make an additional voluntary contribution in the manner provided under Paragraphs 2 and 3 through 5 above and this Paragraph 6 in an amount equal to the remaining respective Minimum Settlement Amounts for the Discount, Access Line and UNE-P credits not issued to satisfy the terms of this Agreement. Qwest may deduct amounts attributable to Eligible CLECs that do not execute a release of any and all claims against Qwest from the amount of Discount Credits, Access Line Credits, and/or UNE-P Credits owed under this Agreement, for a period of one year from the Effective Date of the Commission Decision approving the Settlement Agreement. At the expiration of one year from the Effective Date of the Commission Decision

approving this Settlement Agreement, Qwest shall make additional Voluntary Contributions in the manner provided under Paragraphs 2 and 3 through 5 above in amounts equal to the remaining respective Minimum Settlement Amounts for the Discount, Access Line and UNE-P Credits not issued to satisfy the terms of this Agreement. Qwest may also deduct any amounts due under Paragraphs 3 through 5 of this Agreement for any individual CLEC which brings a claim within one year from the Effective Date of the Commission Decision approving the Settlement Agreement against Qwest arising out of the agreements, acts, or omissions at issue in Docket Numbers: RT-00000F-02-0271 and T-00000A-97-0238 (subdocket). Qwest shall make the additional contributions required under this paragraph no later than 90 days from the submission of its final written report required in Paragraph 7 following.

7. REPORT ON CREDITS.

Within 240 days from the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest shall submit a written report to Staff demonstrating that it has issued the Discount Credits, Access Line Credits, and UNE-P Credits in the manner provided in Paragraphs 3 through 5 above. Qwest shall provide any additional reasonable information as may be requested by the Staff in determining that such credits were issued in a proper and timely manner. CLEC specific information shall be submitted as confidential information. If not all CLECs have executed a release of any and all claims against Qwest, Qwest shall submit a final written report 60 days after the one-year period specified in paragraph 6 above has expired.

8. RETENTION OF INDEPENDENT MONITOR.

Within 90 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest agrees to retain and thereafter pay for an independent third-party monitor, selected by the Director of the Commission's Utilities Division with input from Qwest, to conduct an annual review of the Qwest Wholesale Agreement Review Committee for a period

of three years from the Effective Date of the Commission's Decision approving the Settlement Agreement. The scope of the annual independent review shall be determined by the Staff with input from Qwest and interested parties. The Monitor must be able to demonstrate that he or she can offer an independent opinion, that no conflicts of interest will result from his or her selection and that he or she has not testified in a docket in Arizona involving Qwest in the past three years. Qwest may terminate its retention of the Monitor prior to the end of the three year period only upon the written consent of the Director of the Commission's Utilities Division.

9. COMPLIANCE TRAINING.

Qwest agrees to continue its Compliance Training Program for existing and new employees in the Local Network Services, Wholesale Markets, Product Management, Public Policy, and Law Departments for a minimum period of three years from the Effective Date of the Commission's Decision approving the Settlement Agreement. The Compliance Training Program is an internal web-based training program on compliance with Section 252(e) of the Act.

10. OPT-IN FOR ELIGIBLE CLECS.

Any CLEC currently certificated and operating in Arizona may opt-in to the non-monetary provisions relating to Section 251(b) and (c) services of any agreement listed on Table 1 of the pre-filed Direct Testimony of Marta Kalleberg in Docket No. RT-00000F-02-0271. In exercising opt-in, however, the CLEC must satisfy the criteria under Section 252(i), including but not limited to, assuming any and all related terms in the agreement it chooses.

If a dispute between Qwest and the CLEC arises regarding the eligibility of the CLEC to opt-in to certain provisions of any agreement, Qwest and/or the CLEC may submit a request for a Commission determination in Phase II of Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act).

11. WITHDRAWAL OF FEDERAL APPEAL.

Qwest further agrees to voluntarily move to dismiss with prejudice its appeal of the Commission's Opinion and Order issued on June 12, 2002, Decision No. 64922, in *Investigation Into Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts*, Phase II, ACC Docket No. T-00000A-00-0194 that it filed in the United States District Court for the District of Arizona (Case No. CIV 02-1626 (PHX-SRB), captioned *Qwest Corporation v. Arizona Corporation Commission, et al.* ("the Appeal")) within 30 days of the Effective Date of the Commission's Decision approving the Settlement Agreement.

Until its filing for dismissal is made with the Court, Qwest agrees to seek whatever extensions of time are necessary and to inform the Court that a settlement has been entered into with the Commission that would result in dismissal of the Appeal. The Staff agrees to support Qwest's motion to dismiss the Appeal, and any extensions of time which Qwest requests.

Each party to the Appeal, however, will be required to bear its own attorneys' fees and costs incurred therein.

12. RETENTION OF CONSULTANT FOR IMPLEMENTATION OF WHOLESALE RATES.

Qwest further agrees that within 90 days of the Effective Date of the Commission's Decision approving this Settlement Agreement, Qwest shall retain and thereafter pay for an independent third-party consultant, selected by the Director of Utilities with input from Qwest. Qwest's obligation to pay the billings of the third party consultant shall be limited to a total payment of no more than \$150,000. The scope of the Consultant's work shall be determined by the Commission Staff with input from Qwest and interested parties. The Consultant shall provide independent assessments to the Commission and its Staff of improvements made to automate Qwest's wholesale rate implementation processes. The Consultant shall provide

recommendations on further process changes with the goal of mechanizing of Qwest's wholesale implementation processes, to the extent technologically and economically feasible. Qwest agrees to meet with Staff to discuss the economic and practical feasibility of implementing the recommendations contained in such reports. Qwest shall retain the Consultant for a period of three years from the Effective Date of the Commission's Decision approving this Settlement Agreement but may terminate its retention of the consultant prior to the end of the three year period only upon the written consent of the Director of the Commission's Utilities Division.

13. COST DOCKET GOVERNANCE TEAM.

Qwest agrees to continue its Cost Docket Governance Team for a period of three years from the Effective Date of the Commission's Order approving the Settlement Agreement. The Cost Docket Governance Team is a team comprised of executive level personnel from organizations within Qwest with primary involvement and responsibility for wholesale cost docket implementation in Arizona. Those organizations include: Wholesale Product Management, Wholesale Service Delivery, and Public Policy. The purpose of the team is to provide both an oversight role and to serve as an escalation point for issues or obstacles that may arise during the implementation process. Qwest may dissolve the OSC Governance Team before the end of the three year period only with the Director of Utilities' written consent.

14. NOTIFICATION OF WHOLESALE RATE CHANGES TO COMMISSION AND CLECS.

Qwest further agrees to provide prompt written notification to its wholesale customers in Arizona of changes in their wholesale rates upon the occurrence of any of the following events: (a) the issuance of a final Commission Decision changing wholesale rates, which contains updated wholesale rate sheets; and (b) the appearance of the new Commission-approved wholesale rates on customer bills. Qwest shall promptly provide information to the Commission

and Staff concerning the status and time frames for implementation of future changes in wholesale rates.

Qwest shall meet and confer with Staff one year from the Effective Date of the Commission's Decision approving the Settlement Agreement concerning: (a) the status of Qwest wholesale rate implementation in Arizona; (b) current industry expectations relative to wholesale rate implementation; and (c) Qwest business practices relative to wholesale rate implementation and the negotiation of interconnection agreements with other Arizona carriers.

15. WHOLESALE RATE IMPLEMENTATION.

Qwest shall file its initial compliance filing including a numeric price list within fourteen (14) days of a recommended opinion and order. If Qwest determines that additional time is necessary to complete the filing based on good cause, such as the absence of essential information in the recommended opinion and order to permit numeric wholesale rates to be calculated or a need to restructure the applicable cost model, Qwest shall apply to the Commission for an extension of time to make the compliance filing. Qwest shall implement prospectively all ordered wholesale rates within 60 days from the effective date of the final Commission Decision approving rates and setting forth the numeric wholesale rates to be implemented. Qwest will use its best efforts to determine the numeric rates resulting from the Commission's modifications to the recommended opinion and order in a timely fashion, for inclusion in a final Commission Decision approving new wholesale rates and setting forth numeric wholesale rate changes. Within 60 days from the effective date of the final Commission Decision approving new wholesale rates and setting forth new numeric wholesale rates to be implemented, Qwest shall perform all necessary back-billing back to the effective date of the Commission's Order setting forth the new numeric rates. Qwest may petition the Commission for additional time to implement these rates in the event there are circumstances

beyond Qwest's control that necessitate additional time for implementation, and the Commission shall not withhold approval of such request upon good cause shown.

16. FILING OF SETTLEMENT AGREEMENTS.

Commencing on the Effective Date of the Commission's Decision approving the Settlement Agreement, Qwest shall docket, within ten days of execution, with the Commission any settlement agreements reached in Commission dockets of general application. On December 31, 2003 and for three years from the Effective Date of the Commission's Order approving the Settlement Agreement, Qwest shall submit to Staff a written statement attesting to the fact that Qwest either has not reached any settlement agreements in Commission dockets of general application for the applicable year, or has docketed such settlement agreements with the Commission.

17. EFFECTIVE DATE.

The "Effective Date" as used in this Agreement shall mean the date by which the Commission's Order approving this Settlement Agreement becomes final by the expiration of the periods set forth in A.R.S. Section 40-253 for the filing and consideration of an application for rehearing.

18. DISMISSAL OF LITIGATION.

Issuance of the Commission's Decision Approving this Settlement Agreement shall constitute full and final resolution of the Litigation, and the Decision shall include an order terminating and closing Phase I of Docket No. RT-00000F-02-0271 (Qwest's Compliance with Section 252(e) of the Federal Act); Docket No. T-00000A-97-0238 (271 Subdocket) (Qwest's Interference with the 271 Regulatory Process); and Docket No. T-01051B-02-0871 (OSC Regarding Qwest's Failure to Implement Wholesale Rates in a Timely Manner).

19. COMMISSION APPROVAL AND SEVERABILITY.

Each provision of this Agreement is in consideration and support of all other provisions, and expressly conditioned upon acceptance and approval by the Commission without change. Unless the Parties to this Agreement otherwise agree, in the event that the Commission does not accept and approve this Agreement according to its terms, then it shall be deemed withdrawn by the Parties and the Parties shall be free to pursue their respective positions in the Litigation without prejudice.

20. COMPROMISE.

This Agreement represents the Parties' mutual desire to compromise and settle all disputed claims at issue in the Litigation in a manner consistent with the public interest and based upon the pre-filed testimony and exhibits and the evidentiary record developed in the Litigation. This Agreement represents a compromise of the positions of the Parties. Acceptance of this Agreement is without prejudice to any position taken by any party in the Litigation and none of the provisions may be referred to, cited or relied upon by any other party in any fashion as precedent or otherwise in any proceeding before this Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purposes and results of this Agreement.

21. PRIVILEGED AND CONFIDENTIAL COMMUNICATIONS.

All negotiations relating to or leading to this Agreement are privileged and confidential, and no party is bound by any position asserted in negotiations, except to the extent expressly stated in this Agreement. As such, evidence of conduct or statements made in the course of negotiation of this Agreement are not admissible as evidence in any proceeding before the Commission, any other regulatory agency or any court.

22. COMPLETE AGREEMENT.

This Agreement represents the complete agreement of the Parties. There are no understandings or commitments other than those specifically set forth herein. The Parties acknowledge that this Agreement resolves all issues that were raised in the Litigation and is a complete and total settlement between the Parties.

23. SUPPORT AND DEFEND.

Each Signatory Party will support and defend this Agreement and any order entered by the Commission approving this Agreement before the Commission or other regulatory agency or before any court in which it may be at issue.

24. APPEALS AND CHANGE OF LAW.

The Parties believe that this Settlement Agreement is in the public interest and lawful. Nothing herein shall be construed as prohibiting Qwest from obtaining a refund of the Cash Payment from the State Treasury made pursuant to Paragraph 1 of the Settlement Agreement, or from conditioning the tender of the Cash Payment to the State Treasury upon the right to a refund, if the court of the highest jurisdiction to which the matter is appealed should ultimately find in a final, nonappealable order that the Settlement Agreement is unlawful or that the Commission Decision approving the Settlement Agreement is reversed. If such condition precludes the acceptance of the Cash Payment by the State Treasury, then the Cash Payment under Paragraph 1 of this Settlement Agreement shall be placed in an interest-bearing escrow account at a financial institution that is mutually agreed to by Staff and Qwest. If no appeal of the Commission Decision approving the Settlement Agreement is filed or if the Court ultimately enters a final, nonappealable order finding the Settlement Agreement is lawful or the

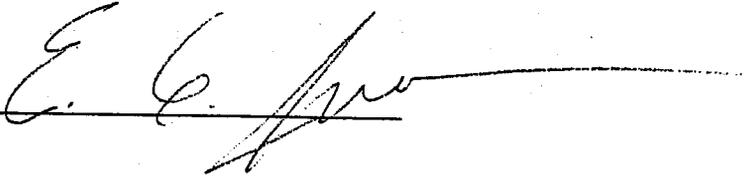
Commission Decision approving the Settlement Agreement is affirmed, the principal and interest contained in the escrow account shall be paid to the State Treasury without further condition. If the court of the highest jurisdiction to which the matter is appealed ultimately finds in a final, nonappealable order that the Settlement Agreement is unlawful or the Commission Decision approving the Settlement Agreement is reversed, the principal and interest contained in the escrow account shall be returned to Qwest. It is further understood that if the court of the highest jurisdiction to which the matter is appealed should ultimately find in a final, nonappealable order that the Settlement Agreement is unlawful or the Commission Decision approving the Settlement Agreement is reversed, Qwest will have no further obligation to make any remaining Voluntary Contributions pursuant to Paragraph 2 of the Settlement Agreement. If a court of lower or intermediate jurisdiction enters an order finding the Settlement Agreement is unlawful or that the Commission's Decision approving the Settlement Agreement shall be reversed, Qwest's obligations pursuant to Paragraphs 1 and 2 will be suspended until the entry of a final, nonappealable order of a higher court finding the Settlement Agreement is lawful or that the Commission Decision approving the Settlement Agreement is affirmed. The Staff shall not oppose Qwest obtaining from the State Treasury a refund of the Cash Payment or Qwest conditioning the payment of the Cash Payment to the State Treasury on the right to a refund, all as set forth in this Paragraph 24. Except as specifically provided in this Paragraph 24, Qwest shall not otherwise place conditions on the payment of the Cash Payment to the State Treasury. In the event that the State Treasury does not accept Qwest's conditional tender of the Cash

Payment, Qwest agrees to negotiate in good faith with the State Treasury in an effort to reach mutually-acceptable conditions for tender of the Cash Payment prior to placing the Cash Payment in an escrow account pursuant to this Paragraph.

DATED this 25th day of July, 2003.

ARIZONA CORPORATION COMMISSION

BY:



QWEST CORPORATION

TL

BY:

