



0000109610

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2003 AUG 14 P 4: 11

1
2 MARC SPITZER
3 CHAIRMAN
4 JIM IRVIN
5 COMMISSIONER
6 WILLIAM A. MUNDELL
7 COMMISSIONER
8 JEFF HATCH-MILLER
9 COMMISSIONER
10 MIKE GLEASON
11 COMMISSIONER

Arizona Corporation Commission

DOCKETED ARIZONA CORPORATION COMMISSION DOCUMENT CONTROL

AUG 14 2003

DOCKETED BY	
-------------	--

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

DOCKET NO. RT-00000F-02-0271

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

DOCKET NO. T-00000A-97-0238

20 ARIZONA CORPORATION COMMISSION

DOCKET NO. T-01051B-02-0871

Complainant,

QWEST CORPORATION,

NOTICE OF FILING
DIRECT TESTIMONY

Respondent.

21 The Arizona Corporation Commission Staff ("Staff") hereby files the Direct Testimony
22 of Ernest G. Johnson, Director of the Utilities Division and Matthew J. Rowell, of the Utilities
23 Division, in the above-referenced matter.

24 RESPECTFULLY SUBMITTED this 14th day of August, 2003.

25 By: Scott
26 Maureen A. Scott, Attorney
27 Legal Division
28 Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
Telephone: (602) 542-3402
Facsimile: (602) 542-4870

1 Original and 17 copies of the foregoing
2 were filed this 14th day of August, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, AZ 85007

7 Copies of the foregoing were mailed and/or
8 hand-delivered this 14th day of August, 2003, to:

9 Charles Steese
10 Andrew Crain
11 QWEST Communications, Inc.
12 1801 California Street, #5100
13 Denver, Colorado 80202

14 Maureen Arnold
15 Director, Regulatory Matters
16 QWEST Communications, Inc.
17 4041 North Central Ave, 11th Floor
18 Phoenix, Arizona 85012

19 Michael M. Grant
20 Gallagher and Kennedy
21 2575 E. Camelback Road
22 Phoenix, Arizona 85016-9225

23 Timothy Berg
24 Fennemore Craig
25 3003 N. Central Ave., Suite 2600
26 Phoenix, Arizona 85016

27 Curt Huttshell
28 State Government Affairs
Electric Lightwave, Inc.
4 Triad Center, Suite 200
Salt Lake City, UT 84180

Brian Thomas, VP Reg. - West
Time Warner Telecom, Inc.
520 SW 6th Avenue, Suite 300
Portland, Oregon 97204

Eric S. Heath
Sprint Communications Co.
100 Spear Street, Suite 930
San Francisco, CA 94105

Thomas H. Campbell
Lewis & Roca
40 N. Central Avenue
Phoenix, Arizona 85004

Andrew O. Isar
TRI
4312 92nd Avenue, N.W.
Gig Harbor, Washington 98335

Michael W. Patten
Roshka Heyman & DeWulf
One Arizona Center
400 East Van Buren, Suite 800
Phoenix, Arizona 85004

Thomas F. Dixon
WorldCom, Inc.
707 17th Street, #4200
Denver, Colorado 80202

Kevin Chapman
Director-Regulatory Relations
SBC Telecom, Inc.
1010 N. St. Mary's Room 13K
San Antonio, TX 78215-2109

Richard S. Wolters
AT&T & TCG
1875 Lawrence Street, Room 1575
Denver, Colorado 80202

Joyce Hundley
United States Department of Justice
Antitrust Division
1401 H Street NW, Suite 8000
Washington, DC 20530

Joan Burke
Osborn Maledon
2929 N. Central Avenue, Floor 21
P.O. Box 36379
Phoenix, Arizona 85067-6379

Scott S. Wakefield, Chief Counsel
RUCO
1110 West Washington, Suite 220
Phoenix, Arizona 85007

1 **Service List 02-0271 & 97-0238**

2 Rod Aguilar
3 AT&T
4 795 Folsom St., #2104
5 San Francisco, CA 94107-1243

6 Daniel Waggoner
7 Davis Wright Tremaine
8 2600 Century Square
9 1501 Fourth Avenue
10 Seattle, WA 98101-1688

11 Diane Bacon, Legislative Director
12 Communications Workers of America
13 5818 North 7th Street, Suite 206
14 Phoenix, Arizona 85014-5811

15 Diane L. Peters
16 Director-Regulatory Services
17 Global Crossing Telemanagement, Inc.
18 1080 Pittsford-Victor Road
19 Pittsford, NY 14534

20 Dennis D. Ahlers, Sr. Attorney
21 Karen L. Clauson
22 Eschelon Telecom, Inc.
23 730 Second Avenue South, Suite 1200
24 Minneapolis, MN 55402

25 Mark P. Trincherro
26 Davis, Wright Tremaine
27 1300 SW Fifth Avenue, Suite 2300
28 Portland, OR 97201

Mark DiNunzio
Cox Arizona Telcom, L.L.C.
20401 North 29 Avenue, Suite 100
Phoenix, AZ 85027
Mark N. Rogers

Excell Agent Services, L.L.C.
PO Box 52092
Phoenix, AZ 85072-2092

Michael Reith
Z-Tel Communications, Inc.
777 S. Harbour Island Blvd., Ste. 990
Tampa, FL 33602

Michael Morris
Allegiance Telecom of Arizona, Inc.
505 Sansome Street 20th Floor
San Francisco, CA 94111

Douglas Hsiao
Jim Schelteman
Blumenfeld & Cohen
1625 Massachusetts Ave., NW, Ste
300
Washington, DC 20036

Kimberly M. Kirby
Davis Dixon Kirby LLP
19200 Von Karman Avenue, Suite 600
Irvine, CA 92612

Al Sterman
Arizona Consumers Council
2849 East 8th St.
Tucson, AZ 85716

Jeffrey Crockett
Snell & Wilmer
One Arizona Center
Phoenix, AZ 85004

Teresa Tan
WorldCom, Inc.
201 Spear Street, Floor 9
San Francisco, CA 94105

Rodney Joyce
Shook, Hardy & Bacon
Hamilton Square
600 14th Street, NW, Ste 800
Washington, DC 20005

David Conn
McLeodUSA, Inc.
6400 C Street SW, PO Box 3177
Cedar Rapids, IA 52406-3177

Barbara P. Shever
LEC Relations Mgr.-Industry Policy
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd.
Suite 220
Tampa, FL 33602

Jonathan E. Canis
Michael B. Hazzard
Kelly Drye & Warren LLP
1200 19th Street, NW, Fifth Floor
Washington, D.C. 20036

1 Jacqueline Manogian
Mountain Telecommunciations
1430 Broadway Road, Suite A200
2 Temple, AZ 85282

3 Frederick Joyce
Alston & Bird, LLP
4 601 Pennsylvania Ave., NW
5 Washington, DC 20004

6 Gary Appel, Esq.
TESS Communications, Inc.
1917 Market Street
7 Denver, CO 80202

8 Harry L. Pliskin, Senior Counsel
Covad Communications
9 7901 Lowry Blvd.
10 Denver, CO 80230

11 Karen Clausen
Eschelon Telecom, Inc.
730 Second Avenue South, Suite 1200
12 Minneapolis, MN 55402

13 Steven J. Duffy
Ridge & Isaacson
14 3101N. Central Avenue, Suite 1090
15 Phoenix, AZ 85012

16 Deborah R. Scott
Associate General Counsel
Citizens Communications Co.
17 2901 North Central Avenue
Suite 1660
18 Phoenix, AZ 85012

19 Todd C. Wiley, Esq.
COVAD Communications
20 Gallagher and Kennedy 2575 East
Camelback Road
21 Phoenix, AZ 85016-9225

22 Richard P. Kolb, VP-Reg Affairs
OnePoint Communications
23 Two Conway Park
150 Field Drive, Suite 300
24 Lake Forest, Illinois 60045

25 Qwest Corporation
Attn: Law Department
26 4041 N. Central, 11th Floor
27 Phoenix, AZ 85012

Raymond S. Heyman
Roshka Heyman & DeWulf
One Arizona Center
400 East Van Buren, Suite 800
Phoenix, AZ 85004

Letty Friesen
AT&T
1875 Lawrence Street, #1405
Denver, CO 80202

Paul Masters
Ernest Communications
6475 Jimmy Carter Blvd. Ste 300
Norcross, GA 30071

Jon Poston
ACTS
6733 E. Dale Lane
Cave Creek, AZ 85331

Rex Knowles
XO
111 E. Broadway, Ste 100
Salt Lake City, UT 84111

Deborah Harwood
Integra Telecom of Arizona
19545 NW Von Newmann Drive,
Suite 200
Beaverton, OR 97006

Bob McCoy
William Local Network, Inc.
4100 One Williams Center
Tulsa, OK 74172

Mark Dioguardi
Tiffany and Bosco, PA
1850 North Central, Suite 500
Phoenix, AZ 85004

Richard M. Rindler
Morton J. Posner
Swider & Berlin
3000 K. Street NW Ste 300
Washington, DC 20007

Penny Bewick
New Edge Networks, Inc.
PO Box 5159
Vancouver, WA 98668

1 Dennis Doyle
2 Arch Communications
3 1800 West Park Drive, Suite 250
4 Westborough, MA 01581-3912

5 Gerry Morrison
6 MAP Mobile Communications, Inc.
7 840 Greenfrier Circle
8 Chesapeake, VA 23320

9 John E. Munger
10 Munger Chadwick
11 National Bank Plaza
12 333 North Wilmot, #300
13 Tucson, AZ 85711

14 W. Hagood Bellinger
15 4969 Village Terrace Drive
16 Dunwoody, GA 30338

17 **Service List 02-0871**

18 Jacqueline Manogian
19 Mountain Telecommunications, Inc.
20 1430 W. Broadway Road, Suite A200
21 Tempe, AZ 85282

22 Robert S. Kant
23 E. Jeffrey Walsh
24 GREENBERG TRAUIG, LLP
25 2375 East Camelback Road,
26 Suite 700
27 Phoenix, AZ 85016

28 Mitchell F. Brecher
GREENBERG TRAUIG, LLP
800 Connecticut Avenue, NW
Washington, DC 20006

Timothy Berg
FENNEMORE CRAIG
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012
Attorneys for Qwest Corporation

Richard S. Wolters
AT&T
1875 Lawrence Street, Room 1575
Denver, CO 80202-1847

Greg Kopta
DAVIS-WRIGHT-TREMAINE
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Lynda Nipps
Allegiance Telecom, Inc.
845 Camino Sure
Palm Springs CA 92262

Gary L. Lane, Esq.
6902 East 1st Street, Suite 201
Scottsdale, AZ 85251

Mike Allentoff
Global Crossing Services, Inc.
1080 Pittsford Victor Road
Pittsford, NY 14534

Phil Doherty
Doherty & Company
545 South Prospect Street, Suite 22
Burlington, VT 05401

Thomas H. Campbell
LEWIS & ROCA
40 N. Central Avenue
Phoenix, AZ 85004

Michael W. Patten
ROSHKA HEYMAN & DEWULF
One Arizona Center
400 East Van Buren, Suite 800
Phoenix, AZ 85004

Jeffrey W. Crockett
Jeffrey B. Guldner
SNELL & WILMER LLP
One Arizona Center
Phoenix, AZ 85004-2202

Michael Grant
Todd C. Wiley
GALLAGHER & KENNEDY
2575 E. Camelback Road
Phoenix, AZ 85016-9225

Thomas F. Dixon, Jr.
MCI Worldcom
707 17th Street
Denver, CO 80202

Darren S. Weingard
Stephen H. Kukta
Sprint Communications
1850 Gateway Drive, 7th Floor
San Mateo, CA 94404-2467

02-0871 Service List

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Scott S. Wakefield
RUCO
1110 West Washington, Suite 220
Phoenix, AZ 85007

Raymond S. Heyman
Randall H. Warner
ROSHKA HEYMAN & DEWULF,
PLC
400 East Van Buren, Suite 800
Phoenix, AZ 85004

Marti Allbright, Esq.
Mpower Communciations Corp.
5711 South Benton Circle
Littleton, CO 80123

Kimberly M. Kirby
DAVIS DIXON KIRBY LLP
19200 Von Karman Avenue, Suite 600
Irvine, CA 92612

Joyce B. Hundley
Untied States Dept. of Justice
Antitrust Division
City Center Building
1401 H. Street, NW, Suite 8000
Washington, DC 20530

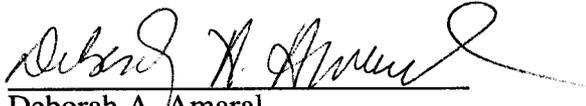
Brian Thomas
Vice-President Regulatory West
Time Warner Telecom, Inc.
223 Taylor Avenue North
Seattle, Washington 98109

Deborah R. Scott
Associate General Counsel
Citizens Communications Co.
2901 North Central Ave., Ste 1660
Phoenix, AZ 85012

Joan S. Burke
OSBORN MALEDON, PA
2929 North Central Avenue, 21st Floor
P.O. Box 36379
Phoenix, AZ 85067-6379

Curt Huttzell, Ph.D.
Electric Lightwave
4 Triad Center Suite 200
Salt Lake City, UT 84180

Charles Best, Assoc. Gen. Counsel
Electric Lightwave, L.L.C.
4400 NE 77th Avenue
Vancouver, WA 98662



Deborah A. Amaral
Assistant to Maureen A. Scott



**ARIZONA CORPORATION COMMISSION
UTILITIES DIVISION**

**DIRECT
TESTIMONY
OF
ERNEST G. JOHNSON
MATHEW ROWELL**

DOCKET NO. RT-00000F-02-0271, T-00000A-97-0238 AND T-01051B-02-0871

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

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

**ARIZONA CORPORATION COMMISSION
Complainant
V.
QWEST CORPORATION
Respondent**

AUGUST 14, 2003

BEFORE THE ARIZONA CORPORATION COMMISSION

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

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,))	DOCKET NO. T-01051B-02-0871
V.)	
QWEST CORPORATION Respondent)))	

DIRECT

TESTIMONY

OF

ERNEST G. JOHNSON

UTILITIES DIRECTOR

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

AUGUST 14, 2003

TABLE OF CONTENTS

	<u>Page</u>
Executive Summary	i
Introduction.....	1
Overview	1
Issues.....	2
Settlement Process	2
Terms and Conditions.....	4
Outline of Principles	4
Goals	6
Discussion of Recitals.....	7
Cash Payment.....	8
Voluntary Contributions	9
Provisions to Benefit Competitors.....	10
Withdrawal Of Federal Wholesale Pricing Appeal	10
Ongoing Compliance	11
Public Interest	12

EXECUTIVE SUMMARY

Mr. Johnson provides policy testimony concerning process, recitals, cash payment, voluntary contributions, provisions to benefit competitors, withdrawal of the federal wholesale pricing appeal, appeals of the Commission's decision on the global settlement, ongoing compliance and public interest. Specifically, Mr. Johnson presents testimony describing how the settlement process arose, Staff's goals with respect to settlement, general policy and background discussions concerning cash payment, voluntary contributions, federal wholesale pricing appeal, appeals of the Commission's decision on the global settlement, ongoing compliance and public interest.

Mr. Johnson shares Staff's strongly felt view that the conduct at issue (or similar conduct) should not be repeated and that a reasonably sufficient deterrent be established. He further states Staff's belief that the commitments expressed in the recitals, in conjunction with the monetary penalties and contempt possibly should serve to assist Qwest in ensuring that it conducts its business activities with integrity, honesty, in conformance with Arizona laws and regulations and with respect for the regulatory processes of the Commission.

1 **INTRODUCTION**

2 **Q. Please state your name, occupation, and business address.**

3 A. My name is Ernest G. Johnson, Arizona Corporation Commission Utilities Director, 1200
4 West Washington Street, Phoenix, Arizona 85007.

5
6 **Q. Briefly describe your responsibilities as Utilities Director.**

7 A. I am responsible for the day to day operations of the Utilities Division, including policy
8 development, case strategy and overall division management.

9
10 **Q. Please summarize your educational background and professional experience.**

11 A. In 1979 and 1982 respectively, I earned Bachelor of Science and Juris Doctorate degrees,
12 both from the University of Oklahoma. I have been involved in the regulation of public
13 utilities since 1986. I was employed by the Oklahoma Corporation Commission in 1986
14 in various legal capacities. In 1993, I was named acting Director and served in that
15 position until mid 1994. I served as permanent Director from mid 1994 until October
16 2001. While serving in these capacities, I have participated in numerous regulatory
17 proceedings including providing policy analysis concerning Electric Restructuring before
18 the Oklahoma Corporation Commission and Oklahoma State Legislature. In October
19 2001, I joined the Arizona Corporation Commission as Utilities Director.

20
21 **OVERVIEW**

22 **Q. Did you participate in discussions which gave rise to the Settlement Agreement**
23 **between Qwest and Staff?**

24 A. Yes, I did. I was part of the Staff negotiating team.

1 **Q. What is the purpose of your pre-filed direct testimony in this case?**

2 A. My testimony is offered to provide background regarding the settlement process and to
3 share the Staff policy perspective regarding the Settlement Agreement.
4

5 **ISSUES**

6 **Q. What specific issues will your testimony address?**

7 A. Specifically, my testimony will focus on the following areas:

- 8 • Process
9 • Recitals
10 • Cash payment
11 • Voluntary Contribution
12 • Provisions to Benefit Competitors
13 • Federal Wholesale Pricing Appeal Dismissal
14 • Appeal of the Commission's Decision on the Global Settlement
15 • Ongoing Compliance
16 • Public Interest
17

18 **SETTLEMENT PROCESS**

19 **Q. Please discuss the settlement process.**

20 A. I was contacted by Mr. David Zeigler of Qwest who inquired whether Staff might be
21 interested in some type of global resolution of certain outstanding dockets involving
22 Qwest.

23 Specifically, Mr. Zeigler was interested in resolving dockets # RT-00000F-02-0271
24 (Qwest compliance with section 252(e) of the Federal Act), T-00000A-97-238 (the 271
25 sub docket which addresses allegations that Qwest interfered with the 271 regulatory
26 process) and T-01051-02-0871 (the order to show cause "OSC" for not implementing

1 Commission approved wholesale rates on a timely basis). These dockets are collectively
2 referred to in the Settlement Agreement as the "Litigation".

3

4 **Q. What was your response to Mr. Zeigler's inquiry?**

5 A. I responded that Staff would be open to a serious desire by Qwest to resolve the disputed
6 issues in the above referenced dockets.

7

8 **Q. What did you mean when you utilized the term "serious"?**

9 A. I was simply attempting to convey the message that Staff was not interested in having
10 discussions with Qwest which were not designed to significantly address the issues raised
11 in the Litigation.

12

13 **Q. Did you have subsequent discussions with Mr. Zeigler?**

14 A. Yes, I did. Mr. Zeigler and I spoke on numerous occasions, principally by telephone.

15

16 **Q. What was the general nature of those conversations?**

17 A. Basically, we discussed the desire of Qwest and the Staff to appropriately address the
18 issues raised in the litigation and concluded that an agreed upon solution would probably
19 be beneficial.

20

21 **Q. Why would an agreed upon solution appear more beneficial?**

22 A. Litigation has risks; the outcome is ultimately determined by someone else. There are
23 times where litigants believe that it would be more preferable to have certainty instead of
24 uncertainty.

25

26 **Q. Was this a case where the litigants desired to have certainty instead of uncertainty?**

27 A. Yes.

1 **TERMS AND CONDITIONS**

2 **Q. In your discussions with Mr. Zeigler did you and he discuss issues, terms and**
3 **conditions that would need to be addressed if settlement were to occur?**

4 A. Yes, we did.

5
6 **Q. Were these discussions intended to be confidential?**

7 A. Yes, they were.

8
9 **Q. Were other Staff members' participants in these discussions?**

10 A. Yes, our principal staff negotiating team consisted of Elijah Abinah (Assistant Director),
11 Matt Rowell (Chief Energy & Telecom), Maureen Scott (Legal Counsel) and myself.

12
13 **Q. What about the Qwest team?**

14 A. Members of the Qwest negotiating team included Mr. Zeigler, Mr. Tim Berg and Mr.
15 Todd Lindy (both legal counsel to Qwest).

16
17 **OUTLINE OF PRINCIPLES**

18 **Q. Mr. Johnson what was the outcome of the discussion between Staff and Qwest?**

19 A. The result was an "Outline of Principles" to which Staff and the company could agree.

20
21 **Q. You mentioned an "Outline of Principles"?**

22 A. Yes.

23 **Q. Was this "Outline of Principles" intended to be a global settlement?**

24 A. No, the terms and conditions set forth in the outline were simply an expression of general
25 concepts that were acceptable to Staff and Qwest, but it was clearly recognized by both
26 Qwest and Staff that there existed numerous other issues and it was both necessary and
27 appropriate to have discussion with other parties to the litigation.

1 Q. Mr. Johnson, to your knowledge was Qwest having discussions with any other party
2 to the litigation?

3 A. Yes, Qwest had engaged the Residential Utility Consumer's Office ("RUCO") in dialogue
4 concerning resolution of the Litigation.

5
6 Q. What happened after Staff and Qwest reached an agreement on the "Outline of
7 Principles"?

8 A. As I recall, the "Outline of Principles" was made available to other parties.
9

10 Q. Mr. Johnson were there meetings with other parties after transmission of the
11 "Outline of Principles"?

12 A. Yes, I believe there were two (2) meetings involving various parties to the Litigation.
13

14 Q. Do you happen to recall who was represented at those meetings, other than Qwest
15 and Staff?

16 A. I recall that AT&T, MTI, MCI, RUCO, and Time Warner were participants in one or more
17 of these meetings.
18

19 Q. What was the purpose of the meetings?

20 A. The meetings were intended to provide an opportunity for discussion of the "Outline of
21 Principles" and to address any other issues, in the hopes of arriving at an agreement that
22 would be acceptable by all parties.
23

24 Q. Did the meetings produce an agreement acceptable to all parties?

25 A. Unfortunately no, the meetings produced robust discussions and debate, but in the end
26 they did not produce an agreement acceptable to all parties.

1 **Q. Mr. Johnson, were the "Outline of Principles" modified as a result of comments**
2 **made by other parties?**

3 A. Yes, the outline was intended to serve as a basis for subsequent agreement. It was not a
4 final agreement. As I recall, during the meetings and subsequent thereto, Staff discussed,
5 proposed and made modifications to the "Outline of Principles".

6
7 **Q. What happened next?**

8 A. Various parties indicated either their intent not to or inability to become signatories to an
9 agreement which contained terms similar to those in the outline. Thereafter, Qwest and
10 Staff continued to engage in discussions which ultimately gave rise to the Settlement
11 Agreement.

12
13 **Q. Mr. Johnson, do you have any final thoughts about the settlement process?**

14 A. Yes, I would like to thank the various entities that participated in these discussions.
15 While it is regrettable that a global settlement was not obtained, I believe the settlement
16 document reflects reasonable efforts to address many of the concerns raised by various
17 parties.

18
19 **GOALS**

20 **Q. Mr. Johnson what were Staff's goals during the negotiations?**

21 A. It was Staff's goal that the conduct at issue in the Litigation not be repeated and that a
22 reasonably sufficient deterrent be established.

23
24 **Q. Could you be more specific?**

25 A. Yes, specifically it was important to Staff that Qwest conduct its business in a manner
26 which demonstrated respect for the regulatory process, specifically as it related to the 271

1 regulatory processes. It was also important to Staff that Qwest faithfully and timely
2 implement commission orders and decisions.

3 Finally, it was important that Qwest make all necessary and required filings mandated by
4 section 252(e) of the Telecom Act of 1999.

5 In summary, Staff desired a commitment that Qwest would conduct all of its business
6 affairs before the ACC and in Arizona with integrity, honesty, in conformance with
7 Arizona laws and regulations and with respect for the regulatory process of the
8 Commission. It was Staff's view that such a commitment would substantially reduce the
9 probability that the concerns alleged in the litigation would reoccur.

10
11 **Q. Mr. Johnson, could you please explain the purpose of the recitals set forth in the**
12 **settlement agreement.**

13 A. Yes, as settlement discussions continued, it became clear to staff that any final settlement
14 agreement would need to explicitly address the corporate behavior of Qwest. Staff was
15 particularly concerned that Qwest recognize the serious concerns that existed regarding its
16 actions in matters pending before the ACC. Staff unequivocally, felt that Qwest had
17 inappropriately interfered with the 271 regulatory process, that it had intentionally not
18 filed certain interconnection agreements entered into with McLeod & Eschelon with the
19 Commission for approval as required under 47 U.S.C. 252(e) and that it had not
20 implemented the new rates ordered by the Commission in Decision 64922 in a timely
21 manner. Therefore, Staff requested and Qwest agreed that an expressed commitment
22 regarding future conduct of Qwest was both necessary and appropriate.

23
24 **DISCUSSION OF RECITALS**

25 **Q. Could you please summarize the recitals?**

26 A. Yes, basically the recitals set forth the following:

- 1 • Qwest's commitment to conduct "all" of its business affairs in the State
2 with integrity, honesty, in conformance with Arizona laws and regulation
3 respect for the regulatory processes of the Commission.
4 • Qwest's intention to comply fully in the future with all written laws, rules, r
5 and orders governing Qwest's conduct.
6 • Qwest's commitment that the company and its official representatives will n
7 in fraudulent, deceptive or intentionally unlawful conduct in any matters
8 before the ACC.

9
10 In Staff's opinion, taken as a whole the recitals express an intention by Qwest to e
11 the type behavior which necessitated the filing of the Litigation.

12 This expressed intention recognizes that Qwest's failure to abide by its commitm
13 be punishable through a contempt proceeding.

14
15 **CASH PAYMENT**

16 **Q. Mr. Johnson, does the Settlement Agreement provide for a cash payment to be**
17 **by Qwest?**

18 A. Yes.

19
20 **Q. What is the amount of the cash payment?**

21 A. The cash payment amount is \$5,197,000.00.

22
23 **Q. How was the cash payment determined?**

24 A. The cash payment amount was the result of negotiation and compromise.

1 **Q. Could you please elaborate?**

2 A. Yes, Staff was interested in a financial penalty that would be substantial and which would
3 serve as a deterrent to Qwest.

4
5 **Q. Mr. Johnson could the amount of the cash penalty been greater?**

6 A. Yes, that is possible, but the cash penalty is only one component of the result sought by
7 Staff.

8
9 **VOLUNTARY CONTRIBUTIONS**

10 **Q. Mr. Johnson, the settlement also provides for a minimum of \$6,000,000.00 be set**
11 **aside for various voluntary contributions, is that correct?**

12 A. Yes, it does.

13
14 **Q. What were the policy considerations associated with this section of the settlement?**

15 A. During the course of the negotiations it became clear that Qwest and Staff would not reach
16 agreement on an aggregate cash payment significantly greater than the amount discussed
17 previously. It was also clear that the value of that cash payment was inadequate from
18 Staff's perspective. Qwest and Staff discussed various other items in an effort to resolve
19 Staff's concerns. Ultimately, the parties concluded that the public could benefit through
20 the establishment of certain voluntary contributions.

21
22 **Q. How will the minimum \$6,000,000.00 voluntary contributions be utilized?**

23 A. In essence, the \$6,000,000.00 sum could be utilized in the following areas:

- 24 1. Section 501(c) (3) organizations or other state-funded programs involved in the
25 areas of education and/or economic development.
26 2. Educational programs designed to promote greater understanding of
27 telecommunications issues by Arizona consumers.

1 3. Infrastructure investment, including investments in unserved and underserved
2 areas in the state of Arizona.

3

4 **Q. Mr. Johnson, are the areas referenced above intended to prohibit the Commission**
5 **from designating specific projects?**

6 A. No, that was certainly not the intent of the parties.

7

8 **Q. Mr. Johnson, what is the minimum value of the settlement?**

9 A. The minimum value, (inclusive of CLEC credits of approximately \$9.2 million) would
10 exceed twenty (\$20) million dollars in total.

11 **PROVISIONS TO BENEFIT COMPETITORS**

12 **Q. Mr. Johnson, does the Settlement Agreement contain provisions designed to benefit**
13 **Qwest's competitors?**

14 A. Yes, Sections 3, 4 and 5 of the Settlement Agreement provide for discounts and credits for
15 eligible CLECs. In addition, Section 10 of the Settlement Agreement allows CLECs to
16 opt-in to the non-monetary provisions relating to Section 251(b) and (c) services of any
17 agreement listed on Table 1 of the prefiled Direct Testimony of Marta Kalleberg in
18 Docket No. RT-00000F-02-0271.

19

20 **WITHDRAWAL OF FEDERAL WHOLESALE PRICING APPEAL**

21 **Q. Mr. Johnson, section eleven (11) of the Settlement Agreement is entitled**
22 **"WITHDRAWAL OF FEDERAL WHOLESALE PRICING APPEAL", could you**
23 **briefly explain the purpose of this section?**

24 A. Yes, the purpose of this section is simply to specifically express and memorialize the
25 intent of Qwest to dismiss its federal lawsuit against the Commission arising out of Phase
26 II of the ACC's wholesale pricing proceeding Docket No. T-00000A-00-0194 (Decision
27 No. 64922).

1 **Q. Why is this issue part of the settlement?**

2 A. Staff felt that it was appropriate to consider other additional issues in its assessment of
3 settlement value. Staff believes this provision is also of benefit to Qwest's competitors
4 since it provides for more certainty with respect to wholesale service rate levels.

5
6 **Q. Mr. Johnson, could you briefly explain the thinking behind section twenty-four (24)**
7 **entitled "APPEALS AND CHANGES OF LAW"?**

8 A. Yes, basically the parties were attempting to deal with uncertainty. During the course of
9 the negotiations the parties wanted to ensure good faith performance of the underlying
10 terms, while recognizing the possibility that any resulting commission decision approving
11 the settlement could be appealed. Frankly, the negotiations regarding this section were
12 quite intense and very involved. Unfortunately, it was necessary to contemplate various
13 scenarios and to appropriately provide for treatment of various possible outcomes.
14 In essence, during the settlement discussions the parties were unsure what steps would be
15 required in order to make the conditional payment and to provide for its return upon the
16 happening of certain events as expressed in section twenty-four (24) of the settlement
17 agreement. These concerns only arise in the context of an appeal of a commission
18 decision approving the settlement.

19
20 **ONGOING COMPLIANCE**

21 **Q. Mr. Johnson, in addition to the recitals, does the Settlement Agreement contain other**
22 **provisions to ensure that Qwest does not engage in the same type of behavior in the**
23 **future?**

24 A. Yes, Sections 8, 9, 12, 13, 14, 15 and 16 all contain measures which are designed to
25 ensure that Qwest does not engage in the same type of conduct which is the subject of the
26 Litigation in the future.

1 **PUBLIC INTEREST**

2 **Q. Mr. Johnson, do you believe the settlement agreement is in the public interest?**

3 A. Yes, I do.

4

5 **Q. Please explain.**

6 A. As stated previously, Staff strongly felt that the conduct at issue (or similar conduct) not
7 be repeated and that a reasonably sufficient deterrent be established. Staff believes that
8 the commitments expressed in the recitals, in conjunction with the monetary penalties and
9 contempt possibility should serve to assist Qwest in ensuring that it conducts its business
10 activities with integrity, honesty, in conformance with Arizona laws and regulations and
11 with respect for the regulatory processes of the commission.

12

13 **Q. Mr. Johnson is there anything further that you would like to add?**

14 A. Yes, through the settlement agreement Qwest has agreed to a variety of concessions
15 (monetary and non-monetary) including payments to the state, voluntary contributions,
16 opportunities for CLECs to obtain monetary relief, independent monitoring and
17 withdrawal of Qwest's appeal of Commission Decision No. 64922. Staff believes this
18 result to be consistent with the interests of the public.

19

20 **Q. Does this conclude your testimony?**

21 A. Yes, it does.

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman

JIM IRVIN
Commissioner

WILLIAM A. MUNDELL
Commissioner

JEFF HATCH-MILLER
Commissioner

MIKE GLEASON
Commissioner

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

DIRECT

TESTIMONY

OF

MATTHEW ROWELL

CHIEF: TELECOMMUNICATIONS AND ENERGY SECTION

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

AUGUST 14, 2003

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	1
INTRODUCTION	1
OVERVIEW OF THE SETTLEMENT.....	2
PARAGRAPH 1: CASH PAYMENT	2
PARAGRAPH 2: VOLUNTARY CONTRIBUTIONS	3
PARAGRAPH 3: DISCOUNT CREDITS	8
PARAGRAPH 4: ACCESS LINE CREDITS	10
PARAGRAPH 5: UNE-P CREDITS.....	12
PARAGRAPHS 6 AND 7: ADDITIONAL VOLUNTARY CONTRIBUTIONS AND REPORT ON CREDITS.....	15
PARAGRAPHS 8 AND 9: RETENTION OF INDEPENDENT MONITOR AND COMPLIANCE TRAINING	16
PARAGRAPH 10: OPT IN FOR ELIGIBLE CLECS	16
PARAGRAPH 11: WITHDRAWAL OF FEDERAL APPEAL.....	18
PARAGRAPH 12: RETENTION OF CONSULTANT FOR IMPLEMENTATION OF WHOLESALE RATES	18
PARAGRAPH 13 AND 14: COST DOCKET GOVERNANCE TEAM AND NOTIFICATION OF WHOLESALE RATE CHANGES	19
PARAGRAPH 15: WHOLESALE RATE IMPLEMENTATION.....	20
PARAGRAPH 16: FILING OF SETTLEMENT AGREEMENTS	20

EXECUTIVE SUMMARY

On July 25, 2003 the Staff of the Arizona Corporation Commission ("Staff") and Qwest Corporation ("Qwest") filed a proposed Settlement Agreement ("the Settlement") in the following dockets: RT-00000F-02-0271, T-00000A-97-0238, and T-01051B-02-0871. Mr. Rowell's testimony will provide an overview of the Settlement and describe and explain the provisions of the Settlement.

1 **INTRODUCTION**

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

3 A. My name is Matthew Rowell. My business address is: Arizona Corporation Commission,
4 1200 West Washington Street, Phoenix, Arizona 85007.

5
6 **Q. What is your position at the Arizona Corporation Commission ("Commission")?**

7 A. I am the Chief of the Telecommunications and Energy section of the Commission's
8 Utilities Division.

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

11 A. I received a BS degree in economics from Florida State University in 1992. I spent the
12 following four years doing graduate work in economics at Arizona State University where
13 I received a MS degree and successfully completed all course work and exams necessary
14 for a Ph.D. My specialized fields of study were Industrial Organization and Statistics. I
15 was hired by the Commission in October of 1996 as an Economist II. I was promoted to
16 the position of Senior Rate Analyst in November of 1997 and to my current position in
17 July of 2001. Prior to my Commission employment I was employed as a lecturer in
18 economics at Arizona State University, as a statistical analyst for Hughes Technical
19 Services, and as a consulting research analyst at the Arizona Department of
20 Transportation.

21
22 **Q. What is the purpose of your testimony?**

23 A. The purpose of my testimony is to describe the Settlement Agreement that the Staff of the
24 Arizona Corporation Commission ("Staff") reached with Qwest Corporation ("Qwest")
25 regarding the following dockets and subdocket: RT-00000F-02-0271 an investigation into
26 Qwest's compliance with Section 252(e) of the Telecommunications Act of 1996 ("the

1 252(e) docket”), T-01051B-02-0871 a Complaint and Order to Show Cause (“OSC”)
2 brought by the Commission against Qwest for their failure to implement certain wholesale
3 rates in a timely fashion, and T-00000A-97-0238 a subdocket to Qwest’s application to
4 provide interLATA service pursuant to Section 271 of the Telecommunications Act of
5 1996 (“the Act”) intended to determine the extent to which Qwest interfered with the
6 regulatory process and to determine appropriate remedies for such interference. These
7 three dockets are referred to as “the Litigation” in the Settlement.
8

9 **OVERVIEW OF THE SETTLEMENT**

10 **Q. Please provide an overview of the Settlement Agreement.**

11 A. Through the Settlement Qwest has agreed to a variety of concessions including payments
12 to the State, voluntary contributions, opportunities for CLECs to obtain monetary relief,
13 independent monitoring, and the withdraw by Qwest of its appeal of Commission
14 Decision No. 64922 (Phase II of the Wholesale Pricing Docket, Docket No. T-00000A-00-
15 0194.) The Settlement provides for a total of at least \$20,397,000 in payments or
16 investments by Qwest. Each provision of the Settlement will be described in detail below.
17

18 **PARAGRAPH 1: CASH PAYMENT**

19 **Q. Please explain the cash payment Qwest has agreed to provide under Paragraph 1 of**
20 **the Settlement Agreement.**

21 A. Qwest agrees to pay the sum of \$5,197,000 to the State Treasurer within 30 days of the
22 Effective Date of a Commission Decision approving the Settlement. This aggregate cash
23 payment consists of three components: \$5,000,000 for the allegations concerning Qwest’s
24 willful noncompliance with Section 252(e) and for Qwest’s alleged interference with the
25 Section 271 regulatory process, \$47,000 for unfilled interconnection agreements which
26 Staff believes should have been filed pursuant to Section 252(e) (but for which Staff could

1 not find that Qwest's actions were intentional and willful), and \$150,000 for the delayed
2 implementation of wholesale rates ordered by the Commission in Decision No. 64922.

3 Paragraph 24 of the Settlement provides that the payment to the State Treasurer can be
4 made conditional on the right to a refund in the event that the Settlement is appealed and
5 the court of the highest jurisdiction to which the matter is appealed finds in a final non-
6 appealable order that the Settlement is unlawful or that the Commission Decision
7 approving the Settlement is reversed.

8
9 **PARAGRAPH 2: VOLUNTARY CONTRIBUTIONS**

10 **Q. Please provide an overview of the provisions of Paragraph 2.**

11 A. Qwest agrees to pay an additional \$6,000,000 (or more) pursuant to Paragraph 2.
12 Paragraph 2 does not specify exactly what the \$6,000,000 will be spent on, rather it
13 provides the Commission with a menu of options for use of the funds. Three general
14 categories are identified for Commission consideration. It is left to the Commission to
15 decide or provide guidance on what portion of the \$6,000,000 should be allocated to each
16 of the three categories. The three categories are: Charitable Contributions, Consumer
17 Education on Telecommunications Issues, and Infrastructure Investment. Within each of
18 these categories individual projects will be proposed by Qwest, Staff, and/or the
19 Commission. Individual projects will be chosen as described below.

20
21 **Q. Is it possible that more than \$6,000,000 will be available for disbursement under the
22 terms of Paragraph 2?**

23 A. Yes. The amounts to be paid out by Qwest pursuant to Paragraphs 3, 4, and 5 of the
24 Settlement will vary based upon the extent of CLEC eligibility and participation.
25 However, the Settlement provides for a minimum amount to be paid out pursuant to

1 Paragraphs 3, 4, and 5.¹ If the actual amount paid out under any of Paragraphs 3, 4, and/or
2 5 is less than the minimum amount specified in the Settlement, the balance will be dealt
3 with pursuant to Paragraph 2. For example, the minimum amount to be paid out to
4 CLECs pursuant to Paragraph 3 (Discount Credits) is \$8,100,000. If it turns out that the
5 actual amount paid out is \$7,000,000; then the remaining \$1,100,000 will become
6 available for disbursement pursuant to Paragraph 2. Individual projects will then again
7 need to be selected. See the discussion of Paragraphs 6 and 7 below for more detail on
8 this process.

9
10 **Q. Can you explain each of the three categories of Voluntary Contributions?**

11 A. The first category, Charitable Contributions, includes contributions to organizations that
12 qualify for exemptions under Section 501(c)(3) of the IRS Tax Code. Additionally,
13 contributions to State-funded programs involved in either education or economic
14 development are also contemplated under this category.

15 The second category includes educational programs to promote greater understanding of
16 telecommunications issues by Arizona consumers. Individual programs would be
17 proposed as discussed below.

18 The third category, Infrastructure Investments, includes investments by Qwest in its
19 network that it would not have otherwise undertaken. Examples of such investments
20 include the deployment of advanced services in rural areas, the deployment of basic
21 infrastructure in remote areas currently within Qwest's service area boundaries, and/or the
22 deployment of infrastructure and agreement to serve in areas currently outside of Qwest's
23 service area boundaries.

¹ The minimum amounts are referred to as Minimum Settlement Amounts in the Settlement Agreement.

1 **Q. Please describe the process by which the initial individual projects² will be selected.**

2 A. First, the parties will request that the Commission determine the allocation among the
3 three categories described above. With the Commission's approved allocation in mind
4 Qwest will provide a list of proposed projects within 30 days of the Effective Date of the
5 Commission Decision approving the Settlement ("the Effective Date".) Within 60 days of
6 the Effective Date other signatories to the Agreement (i.e., Staff) can provide a list of
7 proposed projects. Within 180 days of the Effective Date the Director of the
8 Commission's Utilities Division and Qwest's Arizona President will agree in writing on
9 which projects will be recommended for approval. If they can not reach agreement within
10 180 days of the Effective Date, the selection of projects will be escalated to the
11 Commission. In that event all parties (whether they were signatories to the Agreement or
12 not) have the right to argue in support of or opposition to the proposed projects before the
13 Commission.

14
15 **Q. If the Commission so desires can it propose individual projects?**

16 A. Yes. The process described above does not include an explicit provision for the
17 Commission's input on specific projects; however, it does not preclude the Commission
18 from designating its own specific projects if it so desires.

19
20 **Q. Why does the Settlement contemplate the Commission determining the allocation
21 among the three categories prior to individual projects being proposed?**

22 A. Conceivably there are myriad different projects that could be proposed. Receiving
23 feedback from the Commission early in the process will allow Qwest and Staff to narrow
24 the list of proposed projects to those that are consistent with the vision of the Commission.

² The word "project" is used in a very broad sense here. For the first category of Voluntary Contributions, Charitable Contributions, a "project" could simply be a specific amount donated to a specific charity. For the third category, Infrastructure Investment, a "project" refers to an actual project that involves investments in infrastructure.

1 Thus, knowing the Commission's preferred allocation among the categories will make the
2 selection of individual projects much more efficient than it otherwise would be.
3

4 **Q. Once established, can the allocations between the three categories be altered?**

5 A. Yes, Paragraph 2 provides that the Commission and the Director of the Utilities Division
6 will have the discretion to revise the allocations on a project by project basis if Qwest has
7 not already spent or contractually committed the allocated funds.
8

9 **Q. If the actual amount paid out under any of Paragraphs 3, 4, and/or 5 is less than the**
10 **minimum amount specified in the Settlement, the balance will be dealt with pursuant**
11 **to Paragraph 2. If this occurs how will these funds be allocated to individual**
12 **projects?**

13 A. Paragraph 7 provides that within 240 days of the Effective Date Qwest will submit a
14 written report to Staff detailing the amount paid out under Paragraphs 3, 4, and 5. If all
15 CLECs have signed a release of claims and the minimum amounts under Paragraphs 3, 4,
16 and/or 5 have not been met then the additional allocation process will start after that report
17 is submitted. If not all CLECs execute a release of all claims Qwest is required to submit
18 a final written report within 60 days of the one year period following the Effective Date
19 (14 months from the Effective Date.) The final report will specify the difference between
20 the minimum amounts and the actual amounts paid out pursuant to Paragraphs 3, 4, and 5.
21 If there are funds available to use pursuant to Paragraph 2, the process described above
22 will restart. First, the parties will request that the Commission determine or provide
23 guidance on the allocation among the three categories described above. With the
24 Commission's approved allocation in mind Qwest will provide a list of proposed projects
25 within 30 days of the final report. Within 60 days of the final report other signatories to
26 the Agreement (i.e., Staff) can provide a list of proposed projects. Within 180 days of the

1 final report the Director of the Commission's Utilities Division and Qwest's Arizona
2 President will agree in writing on which projects will be approved. If they can not reach
3 agreement within 180 days of the final report, the selection of projects will be escalated to
4 the Commission. In that event all parties (whether they were signatories to the Agreement
5 or not) have the right to argue in support of or opposition to the proposed projects before
6 the Commission.

7
8 **Q. Once the individual projects are selected how long will it be before they are**
9 **implemented?**

10 **A.** If the projects do not require additional facilities or development of new programs, Qwest
11 shall make its investments in the approved projects within 60 days of the agreement
12 between the Utilities Division Director and Qwest's Arizona President or of approval by
13 the Commission if agreement can not be reached. If a project requires Qwest to develop
14 additional facilities or to develop new programs, construction of such facilities and
15 implementation of such programs shall commence no later than 180 days from the
16 agreement of the Director of the Utilities Division and Qwest's Arizona President, barring
17 any circumstances outside of Qwest's control, including but not limited to, right-of-way
18 ("ROW"), permits, environmental studies, archaeological studies, contract and/or lease
19 negotiations or force majeure events, which shall extend the above-referenced
20 construction date. Any such extensions of time shall first be approved by the
21 Commission's Director of Utilities.

1 **Q. For projects that involve investments in infrastructure, how will the Commission**
2 **know that Qwest would not have implemented those projects even if they had not**
3 **entered into the Settlement Agreement?**

4 A. Qwest has explicitly agreed to provide Staff with the information necessary to determine
5 whether Qwest had already planned to implement a project outside of the Settlement.
6

7 **Q. The Infrastructure Investment category includes investments in unserved and**
8 **underserved areas. How are unserved and underserved areas defined?**

9 A. Unserved areas are areas outside of Qwest's current exchange boundaries not currently
10 served or not adequately served by any wireline telephone service provider and other areas
11 as determined or approved by the Commission. This definition gives the Commission
12 wide latitude in designating areas as unserved. For example, in discussions between Staff
13 and Qwest it was agreed that if the Commission wished to have Qwest serve the Rio
14 Verde/Granite Mountain area currently served by Midvale Telephone Exchange that could
15 be accomplished pursuant to Paragraph 2. Underserved areas are areas within Qwest's
16 current exchange boundaries but outside the Base Rate Area which do not currently have
17 Qwest wireline telephone facilities available.
18

19 **PARAGRAPH 3: DISCOUNT CREDITS**

20 **Q. Please describe the provisions of Paragraph 3.**

21 A. Paragraph 3 provides for Qwest to provide a credit to CLECs equal to 10% of their
22 purchases of services covered by Sections 251 (b) and (c) of the Act made during the time
23 period January 1, 2001 thru June 30, 2002. Qwest will issue these credits to the eligible
24 CLECs within 180 days of the Commission's Decision approving the Settlement.

1 **Q. Which CLECs are eligible to receive the credit?**

2 A. All CLECs except for Eschelon Telecom Inc. ("Eschelon") and McLeodUSA, Inc.
3 ("McLeod") that were certificated and operating in Arizona between January 1, 2001 and
4 June 30, 2002 are eligible to receive the credit.

5 **Q. Why are Eschelon and McLeod excluded from receiving the credits?**

6 A. The credit is based on the provisions of agreements entered into between Qwest and
7 McLeod which were the subject of the 252(e) docket. Those agreements afforded
8 Eschelon and McLeod the opportunity to receive credits similar to those provided for in
9 Paragraph 3 of the Settlement. Since Eschelon and McLeod already have had an
10 opportunity to receive a similar credit, there is no need for them to receive the same credit
11 again. Specifically, the Volume Discount Agreement between McLeod and Qwest dated
12 on or around October 26, 2000 and the Confidential Amendment to the Confidential/Trade
13 Secret Stipulation with Eschelon and Qwest dated November 15, 2000 provided for 10%
14 discounts on services purchased from Qwest.

15
16 **Q. What types of services are covered by Section 251 (b) and (c) of the Act?**

17 A. Generally, wholesale services specific to the provision of local service are covered
18 by Section 251 (b) and (c) of the Act. Unbundled Network Elements ("UNEs"),
19 resale services, and charges for collocation are all covered by Section 251 (b) and
20 (c). Intrastate access, interstate access, switched access, special access, and private
21 line are not covered by section 251 (b) and (c) of the Act.

22
23 **Q. What does an eligible CLEC need to do to receive the credits?**

24 A. Eligible CLECs must sign a release of claims against Qwest that arise from Docket
25 Nos. RT-00000F-02-0271 and T-00000A-97-0238 (Subdocket.)

1 **Q. What are the minimum and maximum amounts to be credited under**
2 **Paragraph 3? What happens if the minimum is not met or if the total claims**
3 **exceed the maximum?**

4 A. The minimum amount of credits under Paragraph 3 is \$8,100,000. If it turns out that less
5 than that amount is credited to the CLECs, the balance will be used in accordance with
6 Paragraph 2 as discussed above. The maximum amount of credits under Paragraph 3 is
7 \$8,910,000. If it turns out that the total claims of the CLECs pursuant to Paragraph 3
8 exceed that amount, then Qwest will disperse the credits ratably. That is, each CLEC will
9 receive that percentage of the \$8,910,000.00 equal to the percentage of that CLEC's claim
10 for Discount Credits to the total claims of all CLECs for Discount Credits.

11
12 **PARAGRAPH 4: ACCESS LINE CREDITS**

13 **Q. Please explain the provisions of Paragraph 4.**

14 A. Paragraph 4 provides for Qwest to provide CLECs with a credit equal to \$2 per month for
15 each UNE-P line and unbundled loop purchased by the CLEC between July 1, 2001 and
16 February 28, 2002, less amounts billed and collected by the CLEC from Qwest for
17 terminating intraLATA toll over those UNE-P lines and unbundled loops during the same
18 time period. Within 30 days of the Effective Date Qwest will notify each CLEC that
19 purchased UNE-P or unbundled loops during the specified timeframe that they may be
20 eligible for a credit. Such notice will include the procedures for response as described
21 below.

22
23 **Q. Which CLECs are eligible to receive the credit?**

24 A. All CLECs except for Eschelon and McLeod that were certificated and operating in
25 Arizona between July 1, 2001 and February 28, 2002 are eligible to receive the credit.

1 **Q. Why are Eschelon and McLeod excluded from receiving the credits?**

2 A. The credits are based on the provisions of agreements entered into between Qwest and
3 Eschelon which were the subject of the 252(e) docket. Specifically, the Switched Access
4 Minute Reporting Letter from Qwest to Eschelon dated July 3, 2001 provided for \$2
5 credits per line (unbundled loop or UNE-P). These credits were intended to address issues
6 related to access records for Qwest's intraLATA toll traffic terminating to customers
7 served by Eschelon's switches. That agreement afforded Eschelon the opportunity to
8 receive credits similar to those provided for in Paragraph 4 of the Settlement. Since
9 Eschelon has had an opportunity to receive similar credits, there is no need for them to
10 receive the same credits again. While McLeod did not enter into an agreement that
11 specifically provided for \$2 credits they did enter into several secret agreements with
12 Qwest. Since McLeod was willing to enter into agreements that Staff believes violated
13 Section 252(e) of the Act, Staff does not believe that they should benefit from the
14 provisions of the Settlement.

15
16 **Q. What does an eligible CLEC need to do to receive the credits?**

17 A. Eligible CLECs must sign a release of claims against Qwest that arise from Docket
18 Nos. RT-00000F-02-0271 and T-00000A-97-0238 (Subdocket.) Also, within 60
19 days of receiving the notice from Qwest, CLECs must provide Qwest with the
20 average number of UNE-P lines and unbundled loops leased by the CLEC per
21 month from July 2001 through February 2002 and the amount actually collected
22 from Qwest for terminating intraLATA toll calls over those UNE-P lines and
23 unbundled loops during the same time period.

1 **Q. What are the minimum and maximum amounts to be credited under**
2 **Paragraph 4? What happens if the minimum is not met or if the total claims**
3 **exceed the maximum?**

4 A. The minimum amount of credits under Paragraph 4 is \$600,000. If it turns out that less
5 than that amount is credited to the CLECs, the balance will be used in accordance with
6 Paragraph 2 as discussed above. The maximum amount of credits under Paragraph 4 is
7 \$660,000. If it turns out that the total claims of the CLECs pursuant to Paragraph 4
8 exceed that amount, then Qwest will disperse the credits ratably. That is, each CLEC will
9 receive that percentage of the \$660,000 equal to the percentage of that CLEC's claim for
10 Discount Credits to the total claims of all CLECs for Discount Credits.

11

12 **PARAGRAPH 5: UNE-P CREDITS**

13 **Q. Please explain the provisions of Paragraph 5.**

14 A. Paragraph 5 provides for Qwest to provide CLECs with a credit equal to \$13 per month
15 for each UNE-P line purchased by the CLEC between November 1, 2000 and June 30,
16 2001, and \$16 per month for each UNE-P line purchased by the CLEC between July 1,
17 2001 and February 28, 2002, less amounts billed by the CLEC from interexchange carriers
18 for terminating intraLATA toll over those UNE-P lines during the same time period.
19 Within 30 days of the Effective Date Qwest will notify each CLEC that purchased UNE-P
20 during the specified timeframe that they may be eligible for a credit. Such notice will
21 include the procedures for response as described below.

22

23 **Q. Which CLECs are eligible to receive the credit?**

24 A. All CLECs except for Eschelon and McLeod that were certificated and operating in
25 Arizona between November 1, 2000 and February 28, 2002 are eligible to receive the
26 credit.

1 **Q. Why are Eschelon and McLeod excluded from receiving the credits?**

2 A. The credits are based on the provisions of agreements entered into between Qwest and
3 Eschelon which were the subject of the 252(e) docket. Specifically, the Confidential
4 Amendment to the Confidential/Trade Secret Stipulation with Eschelon and Qwest dated
5 November 15, 2000 and the Switched Access Minute Reporting Letter from Qwest to
6 Eschelon dated July 3, 2001 provided for monthly \$13 credits per UNE-P line.
7 Those agreements afforded Eschelon the opportunity to receive credits similar to those
8 provided for in Paragraph 5 of the Settlement. These agreements were entered into to
9 compensate Eschelon for inaccurate daily usage information provided by Qwest.
10 Accurate daily usage information is necessary for a CLEC to bill interexchange carriers
11 for access. Since Eschelon already has had an opportunity to receive similar credits, there
12 is no need for them to receive the same credits again. While McLeod did not enter into an
13 agreement that specifically provided for \$13 credits they did enter into several secret
14 agreements with Qwest. Since McLeod was willing to enter into agreements that Staff
15 believes violated Section 252(e) of the act, Staff does not believe that they should benefit
16 from the provisions of the Settlement.

17
18 **Q. What does an eligible CLEC need to do to receive the credits?**

19 A. Eligible CLECs must sign a release of claims against Qwest that arise from Docket
20 Nos. RT-00000F-02-0271 and T-00000A-97-0238 (Subdocket.) Also, within 60
21 days of receiving the notice from Qwest, CLECs must provide Qwest with the
22 following information:
23 i. The months from November of 2000 to February, 2002 that the CLEC
24 believes it did not receive accurate daily usage information from Qwest.
25
26 ii. The reasons that the CLEC believes that the daily usage information was
27 inaccurate.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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.

Within 60 days of receipt of the above information Qwest will either inform the CLECs of the amount of the credit they are to do or explain the reason Qwest believes that the daily usage files Qwest provided to the CLECs are accurate. Within 30 days of such notice Qwest will credit the eligible CLECs the relevant amounts.

If Qwest informs a CLEC that they believe the daily usage files provided were accurate, the CLEC will have 30 days to respond. Qwest will then have the burden to show that the daily usage files were accurate.

Qwest has agreed not to require CLECs to provide information that Qwest already possesses.

Q. What are the minimum and maximum amounts to be credited under Paragraph 5? What happens if the minimum is not met or if the total claims exceed the maximum?

A. The minimum amount of credits under Paragraph 5 is \$500,000. If it turns out that less than that amount is credited to the CLECs, the balance will be used in accordance with Paragraph 2 as discussed above. The maximum amount of credits under Paragraph 5 is \$550,000. If it turns out that the total claims of the CLECs pursuant to Paragraph 5 exceed that amount, then Qwest will disperse the credits ratably. That is, each CLEC will receive that percentage of the \$550,000 equal to the percentage of that CLEC's claim for Discount Credits to the total claims of all CLECs for Discount Credits.

1 **PARAGRAPHS 6 AND 7: ADDITIONAL VOLUNTARY CONTRIBUTIONS AND**
2 **REPORT ON CREDITS**

3 **Q. What reporting requirements does the Settlement impose on Qwest regarding the**
4 **credits given pursuant to Paragraphs 3, 4, and 5?**

5 A. Paragraph 7 provides that Qwest will submit a written report to Staff within 240 days of
6 the Effective Date demonstrating that it has issued the credits pursuant to Paragraphs 3, 4,
7 and 5. Paragraph 7 also provides that Qwest will supply Staff with any reasonable
8 information necessary for Staff to determine that the credits were issued in a proper and
9 timely manner. Regarding the eventuality that not all eligible CLECs have signed a
10 release of all claims, Paragraph 7 provides that Qwest will submit a written report to Staff
11 425 days (14 months) after the Effective Date.

12
13 **Q. If the minimum amounts discussed in Paragraphs 3, 4, and 5 above are not met and**
14 **not all CLECs have signed a release of claims, how long does Qwest have before it**
15 **must make the balance available for use pursuant to Paragraph 2?**

16 A. Paragraph 6 provides that Qwest will make such payments within 90 days of the final
17 report referenced in the above Q and A. This translates to within 17 months of the
18 Effective Date.

19
20 **Q. What are the other provisions of Paragraph 6?**

21 A. Paragraph 6 also provides that for CLECs that do not sign a release of claims, Qwest may
22 deduct from the relevant minimum amounts the amount owed to those CLECs pursuant to
23 Paragraphs 3, 4, and 5 for a period of twelve months from the Effective Date. Pursuant to
24 Paragraph 6 Qwest may also deduct from the relevant minimum amounts any amounts due
25 under Paragraphs 3, 4, and 5 for any CLECs that bring claims against Qwest within one
26 year of the Effective Date.

1 **PARAGRAPHS 8 AND 9: RETENTION OF INDEPENDENT MONITOR AND**
2 **COMPLIANCE TRAINING**

3 **Q. Please describe the provisions of Paragraph 8.**

4 A. Paragraph 8 requires that Qwest hire and pay for an independent monitor to conduct an
5 annual review of Qwest's Wholesale Agreement Review Committee.³ The monitor will
6 be selected by the Director of the Utilities Division with input from Qwest. The monitor
7 will be retained within 90 days of the Effective Date. The monitor will be retained for a
8 period of three years. The scope of the monitor's annual audits will be determined by
9 Staff with input from Qwest and interested parties. Staff believes that the retention of an
10 independent monitor is important because it addresses the issue of ongoing compliance.
11 Without a monitor the Commission would have no way to ensure that Qwest's newly
12 established processes are adequate to prevent future occurrences of the actions that are the
13 subject of the Litigation.

14
15 **Q. Please describe the provisions of Paragraph 9.**

16 A. Paragraph 9 provides that Qwest will continue its internal web based training program
17 concerning compliance with Section 252(e).

18
19 **PARAGRAPH 10: OPT IN FOR ELIGIBLE CLECS**

20 **Q. Please describe the provisions of Paragraph 10.**

21 A. Paragraph 10 provides that any CLEC currently certificated and operating in Arizona can
22 opt into the non-monetary provisions relating to Section 251(b) and (c) services of any of
23 the 28 interconnection agreements listed in Table 1 of the pre-filed Direct Testimony of
24 Marta Kalleberg in Docket No. RT-00000F-02-0271. Table 1 of said testimony is a listing

³ The Wholesale Agreement Review Committee is a committee of Qwest employees established to review all wholesale contracts to determine whether they need to be filed with regulatory bodies. The committee was established in response to the investigations into Qwest's compliance with Section 252(e) of the act.

1 of interconnection agreements that should have been filed by Qwest, but were not. When
2 opting in to one of these agreements CLECs must satisfy the criteria of Section 252(i) of
3 the Act, e.g., they must assume any terms in the agreement related to the one they wish to
4 opt into. Disputes between CLECs and Qwest on eligibility to opt into these agreements
5 will be handled by the Commission in Phase II of Docket RT-00000F-02-0271. Some of
6 these agreements have been terminated but Qwest will make them available for opt-in.

7 Table 1 is reproduced below:

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

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

1 Table 1 includes 28 agreements. However, altogether Staff had identified 42 agreements
2 that should have been filed in the Direct Testimony of Marta Kalleberg. Since Qwest has
3 already filed fourteen of those agreements with the Commission which were approved
4 with modification in Decision No. 65475, dated December 19, 2002 they are already
5 available for opt-in.
6

7 **PARAGRAPH 11: WITHDRAWAL OF FEDERAL APPEAL**

8 **Q. Please describe the provisions of Paragraph 11.**

9 A. Paragraph 11 requires Qwest to withdraw their appeal of Commission Decision No. 64922
10 (Phase II of the Wholesale Pricing Docket) which is currently pending before the United
11 States District Court for the District of Arizona. Qwest agrees to move to dismiss with
12 prejudice said appeal within 30 days of the Effective Date.
13

14 **PARAGRAPH 12: RETENTION OF CONSULTANT FOR IMPLEMENTATION OF**
15 **WHOLESALE RATES**

16 **Q. Please describe the provisions of Paragraph 12.**

17 A. Paragraph 12 provides that Qwest will pay for an independent consultant to provide
18 independent assessments to the Commission of improvements made to automate Qwest's
19 wholesale rate implementation process. (The wholesale rate implementation process was
20 the subject of the OSC docket.) The consultant will be selected by the Director of the
21 Utilities Division with input from Qwest. The consultant will be hired within 90 days of
22 the Effective Date and will be retained for a period of three years. The total billings of
23 this consultant will be capped at \$150,000. The scope of the consultants work will be
24 determined by Commission Staff with input from Qwest. Staff believes that the retention
25 of an independent consultant is important because it addresses the issue of ongoing
26 compliance. Without such a consultant the Commission would be unable to determine

1 whether Qwest's newly established processes are adequate to prevent future occurrences
2 of the actions that are the subject of the OSC Docket.

3
4 **PARAGRAPH 13 AND 14: COST DOCKET GOVERNANCE TEAM AND**
5 **NOTIFICATION OF WHOLESALE RATE CHANGES**

6 **Q. What does the Settlement provide for regarding the Cost Docket Governance Team?**

7 A. Paragraph 13 provides that the Cost Docket Governance Team will continue for a period
8 of three years from the Effective Date. The Cost Docket Governance Team is a team of
9 executive level Qwest personnel whose purpose is to provide oversight for Qwest's
10 improvements to the Wholesale Rate Implementation Process and to act as an escalation
11 point if necessary.

12
13 **Q. What has Qwest agreed to regarding notification of wholesale rate changes?**

14 A. Paragraph 14 provides that Qwest will notify its wholesale customers (the CLECs) upon
15 the occurrence of the following: (a) the issuance of a final Commission Decision changing
16 wholesale rates which contains updated rate sheets, (b) the appearance of new wholesale
17 rates on customer bills. Qwest will also provide the Commission and Staff with
18 information regarding the status and time frames for implementation of future wholesale
19 rates.

20 Qwest will meet and confer with Staff one year from the Effective Date regarding the
21 status of Qwest's wholesale rate implementation processes, current industry expectations
22 for wholesale rate implementation, and Qwest's business practices relative to wholesale
23 rate implementation and the negotiation of interconnection agreements.

1 **PARAGRAPH 15: WHOLESALE RATE IMPLEMENTATION**

2 **Q. What does the Settlement provide for regarding wholesale rate implementation?**

3 A. The settlement provides for a process that is somewhat different from that currently used
4 by the Commission. Currently when the Commission issues a Decision dealing with
5 wholesale rates, the actual rates are usually not included in the Decision. Qwest is
6 required to make a compliance filing thirty days after a Decision is issued that includes all
7 of the new rates (a numeric price list.) During the preparation of the compliance filing all
8 parties of the docket are consulted to insure they concur with the rates. After the
9 compliance filing is made Qwest implements the rates at some unspecified point in the
10 future.

11 The Settlement provides for a different process. The Settlement provides that within 14
12 days of a *Recommended Opinion and Order* ("ROO") being issued by the Hearing
13 Division Qwest will file a numeric price list. The Commission Decision will then include
14 the price list. Qwest will use its best efforts to provide an updated price list for inclusion
15 in a Commission Decision should the Commission make modifications to the ROO. Upon
16 issuance of a Commission Decision that includes the final price list, Qwest will implement
17 the new rates within 60 days.

18
19 **PARAGRAPH 16: FILING OF SETTLEMENT AGREEMENTS**

20 **Q. Please describe the provisions of Paragraph 16.**

21 A. Paragraph 16 provides that Qwest will file with the Commission any settlement
22 agreements reached in Commission dockets of general application within 10 days of
23 execution. Also, for a period of three years from the Effective Date Qwest will file annual
24 reports attesting that they either have filed such agreements or that no such agreements
25 were entered into.

26

1 Q. Does this conclude your testimony?

2 A. Yes, it does.