OPEN MEETING AGENDA ITEM

ORIGINAL

0000109617

TION COMMISSION

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

Arizona Corporation Commission
DOCKETED
AUG 27 2003
DOCKETED BY CAR

2003 AUG 27 P 1:58
AZ CORP COMMISSION DOCUMENT CONTROL
RECEIVED

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 US WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996.	Docket No. T-00000A-97-0238
ARIZONA CORPORATION COMMISSION, Complainant, v. QWEST CORPORATION, Respondent.	Docket No. T-01051B-02-0871 **NOTICE OF FILING TESTIMONY OF THOMAS W. BADE**

Arizona Dialtone, Inc. hereby files the testimony of Thomas W. Bade, President of Arizona Dialtone, Inc., in the above-referenced matters.

RESPECTFULLY SUBMITTED this 27th day of August, 2003.

MORRILL & ARONSON, P.L.C.

By Martin Aronson

Martin A. Aronson
William D. Cleaveland
One East Camelback, Suite 340
Phoenix, AZ 85012
Attorneys for Arizona Dialtone, Inc.

H:\10013.DIR\AZDIALTO\Notice of testimony.wpd

CERTIFICATE OF SERVICE

I certify that the original and 17 copies of the foregoing were hand-delivered this 27th day of August, 2003, to:

Arizona Corporation Commission
Docket Control - Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and that a copy of the foregoing was mailed this 27th day of August, 2003, to the following:

QWEST Corporation
1801 California Street, #5100
Denver, CO 80202

Maureen Arnold
U S WEST COMMUNICATIONS, INC.
3033 N. Third St., Room 1010
Phoenix, AZ 85012

Michael M. Grant
GALLAGHER AND KENNEDY
2575 E. Camelback Rd.
Phoenix, AZ 85016-9225

Timothy Berg
FENNEMORE CRAIG
3003 N. Central Ave., Ste. 2600
Phoenix, AZ 85012-2913

Mark Dioguardi
TIFFANY AND BOSCO, PA
500 Dial Tower
1850 N. Central Ave.
Phoenix, AZ 85004

Thomas L. Mumaw
Jeffrey W. Crockett
Jeffery B. Guldner
SNELL & WILMER
One Arizona Center
Phoenix, AZ 85004-2202

Darren S. Weingard
Stephen H. Kutka
SPRINT COMMUNICATIONS CO. LP
1850 Gateway Dr., 7th Floor
San Mateo, CA 94404-2467

Thomas H. Campbell
LEWIS & ROCA
40 N. Central Ave.
Phoenix, AZ 85007

Andrew O. Isar
TRI
4312 92nd Ave., NW
Gig Harbor, WA 98335

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

Raymond S. Heyman
Randall H. Warner
Michael W. Patten
ROSHKA HEYMAN & DEWULF
One Arizona Center
400 E. Van Buren, Ste. 800
Phoenix, AZ 85004-3906

Karen L. Clausen
Thomas F. Dixon
MCI TELECOMMUNICATIONS CORP.
707 17th Street, #3900
Denver, CO 80202

Richard W. Wolters
AT&T & TCG
1875 Lawrence St., Rm. 1575
Denver, CO 80202

Joyce Hundley
UNITED STATES DEPT. OF JUSTICE
Antitrust Division
1401 H St., NW, Suite 8000
Washington, DC 20530

Joan Burke
OSBORN MALEDON
2929 N. Central Ave., 21st Floor
P. O. Box 36379
Phoenix, AZ 85067-6379

Scott S. Wakefield, Chief Counsel
RUCO
1110 W. Washington, Ste. 220
Phoenix, AZ 85007

Gregory Hoffman
AT&T
795 Folsom St., Rm. 2159
San Francisco, CA 94107-1243

Daniel Waggoner
DAVIS WRIGHT TREMAINE
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Douglas Hsiao
Jim Scheltema
BLUMENFELD & COHEN
1655 Massachusetts Ave., NW, Ste. 300
Washington, DC 20036

Diane Bacon
Legislative Director
COMMUNICATIONS WORKERS OF AMERICA
5818 N. 7th St., Ste. 206
Phoenix, AZ 85014-5811

Mark N. Rogers
EXCELL AGENT SERVICES LLC
P.O. Box 52092
Phoenix, AZ 85072-2092

Mark P. Trinchero
DAVIS WRIGHT TREMAINE LLP
1300 SW Fifth Ave., Ste. 2300
Portland, OR 97201

Mark DiNunzio
COX ARIZONA TELCOM, LLC
20401 N. 29th Avenue, Suite 100
Phoenix, AZ 85027

Jon Loehman
Managing Director-Regulatory
SBC TELECOM, INC.
5800 Northwest Parkway
Suite 135, Room 1.S.40
San Antonio, TX 78249

Andrea P. Harris
Senior Manager, Regulatory
ALLEGIANCE TELECOM, INC.
P. O. Box 2610
Dublin, CA 94568

Karen Clausen
ECHELON TELECOM, INC.
730 N. 2nd Ave. S, Ste. 1200
Minneapolis, MN 55402

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

Harry L. Pliskin
COVAD COMMUNICATIONS CO.
7901 Lowry Blvd.
Denver, CO 80230

Brian Thomas
TIME WARNER TELECOM, INC.
520 S.W. 6th Avenue, Ste. 300
Portland, OR 97204

John Poston
ACTS
6733 E. Dale Lane
Cave Creek, AZ 85331-6561

Jacqueline Manogian
MOUNTAIN TELECOMMUNICATIONS, INC.
1430 W. Broadway Rd., Ste. A200
Tempe, AZ 85282

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

Cynthia A. Mitchell
1470 Walnut St., Ste. 200
Boulder, CO 80302

Peter S. Spivack
HOGAN & HARTSON, LLP
555 13th St., NW
Washington, DC 20004-1109

Douglas R. M. Nizarian
Martha Russo
HOGAN & HARTSON, LLP
555 13th St., NW
Washington, DC 20004-1109

MOUNTAIN TELECOMMUNICATIONS, INC.
1430 W. Broadway Rd., Ste. A200
Tempe, AZ 85282

Mitchell F. Brecher
GREENBERG TRAURIG, LLP
800 Connecticut Ave., NW
Washington, DC 20006

Richard S. Wolters
MICHEL SINGER NELSON
AT&T
1875 Lawrence St., Room 1575
Denver, CO 80202-1847

Mary E. Steele
DAVIS WRIGHT TREMAINE LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Marti Allbright
MPOWER COMMUNICATIONS
5711 S. Benton Circle
Littleton, CO 80123

Nigel Bates
ELECTRIC LIGHTWAVE, INC.
4400 NE 77th Ave.
Vancouver, WA 98662

Bradley Carroll
COX ARIZONA TELCOM, LLC
20401 N. 29th Ave., Ste. 100
Phoenix, AZ 85027

Charles Kallenbach
AMERICAN COMMUNICATIONS SERVICES
131 National Business Parkway
Annapolis Junction, Maryland 20701

Robert S. Tanner
DAVIS WRIGHT TREMAINE LLP
17203 N. 42nd St.
Phoenix, AZ 85032

Lyndall Nipps
Director, Regulatory
ALLEGIANCE TELECOM, INC.
845 Camino Sure
Palm Springs, CA 92262

M. Andrew Andrade
5261 S. Quebec St., Ste. 150
Greenwood Village, CO 80111

Megan Doberneck
Senior Counsel
COVAD COMMUNICATIONS CO.
7901 Lowrey Blvd.
Denver, CO 80230

Al Sterman
ARIZONA CONSUMERS' COUNCIL
2849 E. 8th St.
Tucson, AZ 85716

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Ernest C. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, AZ 85007

By Carrie Moser

OPEN MEETING AGENDA ITEM

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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

Arizona Corporation Commission
DOCKETED
AUG 2 7 2003
DOCKETED BY

RECEIVED
2003 AUG 27 P 1:53
AZ CORP COMMISSION
DOCUMENT CONTROL

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 US WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996.	Docket No. T-00000A-97-0238
ARIZONA CORPORATION COMMISSION, Complainant, v. QWEST CORPORATION, Respondent.	Docket No. T-01051B-02-0871

TESTIMONY OF

THOMAS W. BADE

ON BEHALF OF ARIZONA DIALTONE, INC.

AUGUST 27, 2003

H:\10013.DIR\AZDIALTO\Bade testimony Qwest Stlmt.wpd

EXECUTIVE SUMMARY

Thomas W. Bade is the President of Arizona Dialtone, Inc., a CLEC that resells Qwest lines to independent payphone owners and to residential customers under a prepaid residential plan. In his testimony, Mr. Bade describes some very basic concepts that should be present in any settlement: The disputed claims should be resolved. There should be appropriate compensation for the claims that are being released. And the participants should know what they are getting and what they are giving up. The proposed Settlement fails in every category.

Arizona Dialtone has asked Qwest to clarify the terms of the proposed Settlement and to answer its questions and concerns, but Qwest has not been forthcoming with the information. Instead, Qwest filed evasive testimony that explains nothing. Qwest submitted no data regarding the amount of credit claims it expects to receive, or schedules of the amounts Qwest records show various CLECs should receive in credits. Qwest has not clarified which services it considers to be included and which are not included in the 10% discount credits. And Qwest gives no explanation of the scope of the release that it requires from the CLECs. In essence, Qwest is asking the Commission to "just trust us to interpret it later."

Mr. Bade also gives an overview of Qwest's historic mistreatment of competitors including CLECs and payphone owners: Qwest's wrongful actions have ultimately delayed benefits to the Arizona ratepayers—such as price reductions and service improvements—that would otherwise flow from a properly functioning competitive market. Qwest's secret agreements and willful failures to timely implement wholesale services and pricing changes have unlawfully hindered competition. More particularly, Qwest's unlawful actions have caused Arizona Dialtone to incur increased costs and lost revenues, and Qwest has prevented and delayed Arizona Dialtone from implementing new and innovative residential services in Arizona.

Mr. Bade also describes inequities in the structure of the proposed Settlement, and he recommends the following changes:

- The releases should be narrowly defined as only relating to the particular issue that is the basis of each CLEC credit basket, and they should be limited to the specific time period for each category of credit.
- The caps placed on the CLEC credits should be eliminated. They are not supported in the record, and they only serve to reduce Qwest's liability at the expense of the CLECs that it harmed.
- The resold services that are <u>not</u> intended to be included in the 10% discount credits should be listed in the Settlement so that everyone knows which services are subject to the discounts and which services are not.
- The CLEC credits should be based on time periods beginning after Qwest stopped its discriminatory conduct. Qwest should not be rewarded for hindering competition. This change would allow participation in the CLEC credits at a level of competition that would have existed <u>but for</u> Qwest's wrongful conduct, instead of limiting their participation to a level that existed <u>with</u> Qwest's wrongful conduct.
- The duration of the CLEC credits should be extended to the full five-year term of the secret agreements. Qwest should not be allowed to cut off its liability to the harmed CLECs by paying its favored CLECs for early termination of the discriminatory agreements.
- The CLEC credits should be changed to cash payments instead of credits. This will prevent Qwest from enjoying any benefit from wrongfully driving CLEC's out of business.
- The CLECs should not be required to provide evidence of Qwest's inaccurate DUF records. Qwest is the party with the most knowledge about inaccuracies in its DUF records.

TABLE OF CONTENTS

Introduction....1

Overview....2

Arizona Dialtone and the History of Qwest's Mistreatment of Competition....5

Adverse Impacts of Qwest's Wrongful Actions....9

Inequities in the Proposed Settlement....15

Affidavit of Thomas W. Bade....28

INTRODUCTION.

Q. WILL YOU STATE YOUR NAME AND ADDRESS?

A. My name is Thomas W. Bade. My business address is 7170 West Oakland, Chandler, AZ 85226.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR PRESENT POSITION?

A. I am currently employed by Arizona Dialtone, Inc. as its President.

Q. BRIEFLY EXPLAIN ARIZONA DIALTONE, INC.'S BUSINESS?

A. Arizona Dialtone, Inc. is a competing local exchange carrier ("CLEC") and provides local exchange carrier services as a reseller. Arizona Dialtone currently resells approximately 8,900 telephone lines in Arizona, of which 8,500 are lines purchased from Qwest. The majority of Arizona Dialtone's lines are payphone lines, resold to independent payphone owners. Although it is a much smaller part of Arizona Dialtone's business, we also resell residential lines under a prepaid residential service tariff. Of the total Arizona lines, 8,000 are payphone lines and 900 are residential lines.

Q. BRIEFLY STATE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE?

A. I have 4 years of college education in business administration and accounting at Rockhurst College, Kansas City, Missouri and Thomas More College, Ft. Mitchell, Kentucky, 1968-1972. From 1973 through 1989, I was a consultant for Safeguard Systems, Ft. Myers, Florida, where I installed accounting and finance controls in small to medium sized businesses. In 1990, I managed Diego's Cantina, a restaurant in Tempe, Arizona. My employment in the telephone industry began in 1991. I have installed and maintained call processing systems in hotels and worked in the pay telephone industry managing GCB Communications, Inc., an independent pay telephone provider. For the past 5 years I have been employed by Arizona Dialtone, Inc., initially as its Vice-President in charge of operations, and since January of this year I have been its President.

Q. WHAT ARE YOUR PRESENT JOB RESPONSIBILITIES?

A. In my current position as President, I oversee all aspects of Arizona Dialtone's business including financial planning, regulatory affairs, and day to day general operations such as coordination of billings, accounts payable and receivable, sales and marketing.

OVERVIEW.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to explain how Qwest—through its unlawful secret agreements and unreasonable delays—stifled competition in Arizona for an extended period of time. As a direct result of Qwest's conduct, the Arizona ratepayers have been deprived of the benefits that they had a right to expect from the promised (but undelivered) opening of the LEC market to nondiscriminatory competition.

I will also explain how the proposed Settlement as it is currently worded is not in the public interest. The interpretation of its ambiguous terms will most likely create more litigation. It rewards Qwest for unlawfully delaying competition in Arizona, instead of discouraging such conduct. And the participants cannot determine what they are getting and what they are giving up.

I will also explain the following recommended changes to the proposed Settlement:

- By basing the time periods for the CLEC credits on the same time periods as Qwest's anti-competitive secret agreements, the proposed Settlement rewards Qwest's efforts to unlawfully discriminate against its competitors. Instead, the caps on the CLEC credits should be eliminated and the time periods for the credits should be for the full original duration of the secret agreements, and they should start after Qwest terminated its discriminatory conduct. This will base the credits on a level of competition that should have existed but for Qwest's discriminatory conduct, instead of on the level of competition that existed with the discriminatory conduct.

- The CLEC credits should be cash payments instead of credits so as to not reward Qwest for the CLECs that it has already driven out of business, and Qwest should not be allowed to apply any credits/payments against any outstanding bills that the CLEC has disputed. Also, the requirement for the CLECs to have evidence of inaccurate DUF records should be eliminated.

- The Settlement should specify exactly which services purchased by the CLECs are not eligible for the 10% discount credit. Instead, the proposed settlement rolls the interpretation of particular sections of the '96 Telecom Act back to 2001, and it leaves these issues to be interpreted through future litigation. There should be specific schedules with specific dollar amounts to specific CLECs that Qwest acknowledges as undisputed, according to its business records.

- The scope of the releases included under the CLEC credits sections should be defined with more certainty. They are currently defined only by the very broad scope of the Commission's Dockets, which leaves the CLECs unable to evaluate the claims that they are releasing should they choose to participate in the Settlement.

Q. WHAT IS IT ABOUT THE PROPOSED SETTLEMENT THAT IS TROUBLING TO ARIZONA DIALTONE?

A. Any good settlement agreement should exhibit several very basic concepts. It should put the disputed claims to rest, cleanly and clearly. It should provide appropriate compensation for the claims that are being released. And the participants should know what they are getting and what they are giving up. It does not take an attorney to understand these basic principles. But the proposed Settlement does none of these things.

The proposed Settlement is far from clearly worded. The overbroad and unclarified clauses that it contains will most likely cause more litigation. The testimony that Qwest has filed does nothing to clarify the intent of the proposed Settlement, and it fails to offer any assistance for evaluating its impact on the CLECs that may choose to participate. Also, the proposed Settlement is structured in a way that rewards Qwest's wrongful conduct instead of discouraging such actions. The proposed Settlement, without major modifications and clarifications, is not in the public interest.

For example, at the scheduling conference in this Docket held August 5, 2003, Arizona Dialtone's counsel requested that Qwest's testimony include projections on the amount of claims Qwest expects under each basket of credits, and that it explain the scope of the releases. This very basic information is needed for the CLECs to evaluate what they were getting and what they were giving up. Additionally, we also had our attorney Martin Aronson meet directly with Todd Lundy of Qwest in Denver on August 11, 2003, before Qwest's testimony was due. At this face to face meeting Mr Aronson reiterated our questions and concerns with the proposed Settlement. He specifically described to Mr.

Lundy the Qwest services and the total amount of Arizona Dialtone charges that we interpret as falling within the 10% discount credits, and he asked Mr Lundy to confirm the total amount of 10% discount credits that we expected to receive under the proposed Settlement. Mr. Aronson also has given Mr. Lundy documentation relating to Arizona Dialtone's CC&N application and its interconnection agreement with Qwest, and he has asked Mr. Lundy to confirm that Qwest considers Arizona Dialtone to be an eligible CLEC under the proposed Settlement. But to date, the only response we have received from Qwest is a very brief letter stating there "may be" an issue and the questions of compensation to Arizona Dialtone under the proposed Settlement remain open. Unfortunately, this is typical of the pattern over the years of Quest failing to give Arizona Dialtone straight answers or to treat it fairly.

Further, the Testimony of David Ziegler filed by Qwest addresses none of these issues. Mr. Ziegler's testimony—with its repeated qualifications that he is not offering any legal interpretations—can only be described as evasive. In essence, Qwest is saying to the Commission: "Just trust us to interpret the Settlement in the future." But Qwest has amply demonstrated that it is not to be trusted to interpret anything fairly.

The proposed Settlement is not in the public interest, and it should not be approved by the Commission.

ARIZONA DIALTONE AND THE HISTORY OF QWEST'S MISTREATMENT OF COMPETITION.

Q. EXPLAIN THE HISTORY OF ARIZONA DIALTONE, INC.'S BUSINESS?

A. First, Arizona Dialtone specializes in service to independent payphone owners. In the early years, prior to the 1996 Telecom Act, the independent payphone owners faced enormous hurdles when they tried to enter the market in competition with the incumbent

LECs. Before the invention of smart payphones, Qwest and the other incumbent LECs were the only payphone providers in the market. They simply would not provide the use of their central office controlled coin lines to anyone but themselves. But with the invention of a smart payphone (a payphone that can operate without any special central office coin metering and controlling equipment) anyone could, at least in theory, compete with the incumbent LECs by hooking a smart payphone up to a simple POTS line.

However, it was not that simple. In order to protect their monopoly on payphones, Qwest and many of the other incumbent LECs fabricated one barrier after another, making it as difficult as possible for an independent payphone owner to establish a viable business. Qwest charged drastically high rates for the dialtone service, and it cross-subsidized its own payphones. It imposed End User Common Line Charges on the independent payphone lines when it did not charge them to its own lines, and it imposed similar discriminatory treatment through its yellow pages division. Even though Qwest has been ordered by the FCC several times to refund the EUCL charges from prior to 1997 to the payphone owners, to this day, it has refused to do so. It also imposed onerous credit requirements, refused to provide computerized billing, and refused or failed to provide adequate fraud protection on the independents' lines.

In 1996, Congress made sweeping changes in the independent payphone market. The Telecommunications Act of 1996 required Qwest and the other incumbent LECs to stop many of their discriminatory actions against the independent payphone providers, and it mandated the opening of the LEC services market to competition. Arizona Dialtone looked on the independent payphone providers as an opportunity to enter the competitive LEC services market, and it set out to service that sector of the market.

In June of 1998, Arizona Dialtone negotiated an interconnection agreement with Qwest, and in September of that year Arizona Dialtone began reselling Qwest lines to independent payphone providers. From the beginning, we requested that Qwest provide these lines through unbundled network element (UNE) pricing, just like it did for business or residential phone lines. But Qwest insisted that it did not have to provide UNE pricing for its payphone lines, and it refused to do so. Instead, Qwest limited its payphone lines to its wholesale discount pricing, and it set the discount at the same percentage that it had tariffed for a business line. This refusal of Qwest to implement UNE for payphone lines meant that Arizona Dialtone had very limited flexibility in pricing and provisioning its payphone lines. Also, for Arizona Dialtone, Qwest's refusal to provide UNE for our core business, in essence, excluded Arizona Dialtone from the prepaid residential service market. The added flexibility of UNE is almost an absolute necessity for the residential market because the wholesale discount for residential lines is only 12%.

Arizona Dialtone's business began small. For example, in mid 2000, when Qwest began entering into its secret agreements with its major CLECs, Arizona Dialtone only had 3000 lines. We focused our efforts on the independent payphone owners, offering them the service that Qwest had failed to give them. We provided billing statements in a form that the payphone owners could work with, and we provided credit terms that our customers could meet. But most of all we worked as a knowledgeable and experienced buffer between the independent payphone owners and the cumbersome, confusing and all too often non-responsive service departments within Qwest. In essence, Arizona Dialtone provides the service that independent payphone owners have been seeking for many years.

Q. EXPLAIN ARIZONA DIALTONE'S PREPAID RESIDENTIAL PHONE SERVICE?

A. Some key features of Arizona Dialtone's prepaid residential service include:

- No deposit, no contract.
- Pay as you go for one month at a time.
- One-time $55 connection fee.
- Local calling only—no surprise long distance bills. (Customers can use prepaid calling cards to make long distance calls.)

The service is provided on a prepaid month to month basis. Billing for the next month is sent fifteen days before the monthly anniversary date, and the payment for the next month of service is due before the end of the current monthly billing cycle. If the customer fails to pay for the next month of service, Arizona Dialtone notifies the customer and gives a five day grace period to pay the bill. Then if the account is not paid, the phone is disconnected. Disconnects have been very light, typically only two or three per month.

Many of Arizona Dialtone's residential customers are lower income households that cannot afford the deposit that Qwest requires, or they have been refused service by Qwest. Arizona Dialtone offers these customers their only viable option for obtaining telephone service in their home. About half are Spanish-speaking, and most new customers (90% or more) fear losing their current Qwest service or they have no telephone service at all at the time they obtain service from Arizona Dialtone. Arizona Dialtone uses several check cashing and wireless stores as customer payment locations, and we are in the process of opening a store at 27th Avenue and Thomas that is dedicated to offering this service.

Our residential customers are located all across the Phoenix metropolitan area and we also have residential subscribers in other areas of the State including: Casa Grande, Florence, Tucson, Yuma, etc.

Q. HOW MUCH OF THE INDEPENDENT PAYPHONE MARKET DOES ARIZONA DIALTONE SERVICE?

A. Arizona Dialtone currently provides 8000 payphone lines in Arizona, which includes most of the independent payphone providers' lines. However, it is difficult to quantify the exact numbers. Qwest does not readily publish statistics on the number of payphone lines that it provides. However, because Qwest provides dialtone to its own payphones, it certainly still serves a majority of payphone lines in Arizona. Based on information in various filings made by Quest in the late 1990's, I believe that at that time Qwest had approximately 24,000 payphone lines. But that number is beginning to be a bit dated, and I have no way of providing a good estimate of how much it may have changed over the ensuing years.

My conclusion that Arizona Dialtone services the majority of the independent payphone market is based on my personal knowledge of the independent payphone market and on estimates of the size of the Arizona market obtained through trade associations like the Arizona Payphone Association and the American Public Communications Council.

<u>ADVERSE IMPACTS OF QWEST'S WRONGFUL ACTIONS.</u>

Q. HAS ARIZONA DIALTONE EXPERIENCED DELAYS IN QWEST'S IMPLEMENTATION OF WHOLESALE SERVICES AND PRICING CHANGES?

A. Yes. Although the '96 Telecom Act required Qwest to make unbundled network elements available to CLECs, Qwest delayed its implementation of UNE for payphone lines until 2002. This delay by Qwest in allowing payphone lines under UNE kept Arizona Dialtone's payphone lines priced artificially high throughout this time period, and it also substantially delayed Arizona Dialtone's entry into the prepaid residential phone service market.

The `96 Telecom Act required Qwest and the other incumbent LECs to make the unbundled network elements needed for competition in the payphone market available to CLECs. Although we were requesting UNE, Qwest refused to provide it and insisted that it did not have to make UNE available for payphone lines. Eventually, another CLEC, Ernest Communications, filed a formal complaint with the FCC seeking to compel Qwest to furnish unbundled network elements for payphone lines. Qwest eventually relented, and as part of a settlement of the formal FCC Complaint, Qwest agreed to allow its UNE to be utilized for payphone lines. This settlement occurred in June of 2001, but even after agreeing to do so, Qwest took more than six more months before converting Arizona Dialtone's lines to UNE-P. In December 2001, over three years after Arizona Dialtone began operations, Qwest finally converted a few of its payphone lines to UNE-P, and the bulk of Arizona Dialtone's lines were not converted to UNE until as of January of 2002.

Q. EXPLAIN HOW QWEST'S DELAYS IN IMPLEMENTING UNE FOR ARIZONA DIALTONE'S PAYPHONE LINES ADVERSELY AFFECTED ARIZONA DIALTONE'S ENTRY INTO THE RESIDENTIAL BUSINESS?

A. From the beginning, Arizona Dialtone planned to compete with Qwest in the residential market by offering a prepaid residential service plan. Arizona Dialtone included this prepaid residential service in its initial tariff filed with the Commission in 1998. However, to effectively compete with Qwest's residential service, Arizona Dialtone must utilize unbundled network elements in provisioning its lines. But reselling lines under the complex regulations that govern UNE involves a substantial learning curve which makes starting up a business under UNE a costly and time-consuming affair.

The economies of scale necessary to justify the cost of billing more than one thousand different IXC/CIC codes under UNE are simply not present with only a few hundred residential lines. The only way that Arizona Dialtone could justify starting up a UNE operation was through our core business in payphone lines. We knew that the market for payphone lines existed with the independent payphone providers. Qwest, through its prior mistreatment of the independent payphone owners, had already prepared that market for anyone willing to service it, and Arizona Dialtone was ready to do so.

On the other hand, the market for prepaid residential service was much different. Prepaid residential service was virtually unheard of in Arizona, as far as I knew. A few other CLECs had offered a similar service in other states and their results looked promising. But in Arizona, we knew of no preexisting demand ready to create any initial volume in this business. Instead, Arizona Dialtone would have to devote substantial resources to marketing in order to educate the public on the benefits of prepaid residential service and build up the demand gradually over time beginning at the initial level of zero customers. The substantial investment necessary to start up a UNE operation could not be justified when Qwest would only allow it to be used to support a very few prepaid residential lines. With Qwest refusing to allow UNE for payphone lines, the only way Arizona Dialtone could ever hope to recover its investment in a UNE operation would be to try to quickly build a demand for its prepaid residential services where none existed through even more expensive advertising. Therefore, until Qwest was finally persuaded to make UNE-P available for payphone lines and it got around to implementing it, Arizona Dialtone was unable to pursue its prepaid residential service.

Q. WHEN QWEST CONVERTED ARIZONA DIALTONE'S PAYPHONE LINES TO UNE-P, DID IT AFFECT ARIZONA DIALTONE'S BUSINESS?

A. Yes. As we expected, there was a learning curve involved, and it took several months for Arizona Dialtone to get its tracking and billing systems operational under the UNE-P scheme. But in early 2002 we had the bugs worked out of our systems and procedures, and when Qwest submitted its Compliance Filing to the Commission, Arizona Dialtone cut its payphone line pricing by approximately 25%.

Then, in the second half of 2002, utilizing the experience we gained with UNE-P on the payphone lines and with a UNE system up and operating, we tried to turn our attention to pursuing the prepaid residential market more aggressively.

Q. HOW DID QWEST'S DELAYS IN IMPLEMENTING THE UNE-P PRICING ORDER AFFECT ARIZONA DIALTONE?

A. As I explained earlier, Arizona Dialtone had promised its customers a substantial reduction in rates. But when Qwest failed to implement its pricing changes in its Compliance Filing, Arizona Dialtone had no commensurate reduction in costs. Therefore Arizona Dialtone had to manually review each Qwest phone bill for each of its lines, and recalculate the charges based on Qwest's new rates that they had failed to implement. We were forced to spend hundreds of hours manually recalculating the bills and disputed the overcharges so we could pay Qwest the amounts that it should have billed under its Compliance Filing. This went on for many months until Qwest finally decided to implement its new pricing, and then in 2003, Qwest finally got around to crediting Arizona Dialtone with the overcharges that we had disputed. This again caused Arizona Dialtone to delay its efforts in the prepaid residential market and caused significant uncertainties in our cost structure for yet another six months or so.

Q. HOW HAS ARIZONA DIALTONE'S ENTRY INTO THE PREPAID RESIDENTIAL MARKET GONE SINCE QWEST FINALLY STRAIGHTENED OUT ITS UNE-P PRICING?

A. Although we certainly do not yet have anywhere near enough residential lines to consider this sector of our business to be self supporting, we are encouraged by the growth rate in the demand. In January 2003 we only had 80 residential lines under our prepaid service plan, and we were delaying most of our marketing efforts in this area until we were able to resolve the issues with Qwest's improper pricing and its effect on our cost structure. In the first half of this year, we increased our marketing efforts and we now have 900 prepaid residential lines and the demand for this service is growing every week.

Q. WOULD YOU HAVE OFFERED PREPAID RESIDENTIAL SERVICE EARLIER HAD QWEST NOT DELAYED ITS IMPLEMENTATION OF UNE FOR PAYPHONES AND NOT DELAYED ITS PRICING CHANGES?

A. Yes, absolutely. As I explained earlier, we could not economically justify the investment necessary to establish reselling through UNE supported only by the minor start that we had in the residential market. From a business standpoint, we had to utilize our core business in payphone lines to justify the time and expense of converting to UNE. Had Qwest offered UNE for payphone lines from the beginning as it was required to do under the '96 Telecom Act, Arizona Dialtone would have been participating in the prepaid residential market several years earlier.

Q. DOES QWEST EMPLOY OTHER DISCRIMINATORY BEHAVIOR THAT, WHEN COUPLED WITH ITS SECRET AGREEMENTS AND DELAYS, IMPAIRS THE ABILITY OF SMALLER CLECS TO COMPETE WITH QWEST?

A. Yes. Not only has Qwest discriminated against CLECs with its secret agreements and delays in offering wholesale services and price changes, but it stacks one discriminatory obstacle after another in the path of a CLECs' efforts to compete.

For example, Qwest's service technicians apparently believe that a wire pair hooked up to a payphone is fair game for them to disconnect and use for a Qwest telephone line whenever there are no other pairs available at the location. We repeatedly lose service to our customers' payphones, only to find that Qwest has disconnected our customer's loop and used it for its own customer.

Additionally, with Arizona Dialtone, Qwest refuses to accept automated orders for new payphone lines. It will not even accept an order by e-mail. Instead we must fax an order to them. Then they have to scan the order form into their computer system before their service personnel can retype it and implement it. This causes unnecessary delays in adding new lines and implementing service, and the faxing, scanning and retyping process results in illegible and mis-typed information that then must be clarified and corrected before the order can be properly implemented. This results in Qwest rejecting or improperly implementing a significant percentage of Arizona Dialtone orders. Also, Qwest charges Arizona Dialtone more for manual orders for new or converted lines (over $15 more per line) than it would charge for automated orders. So, this is a double penalty to Arizona Dialtone (and its customers) through barriers to new lines and higher charges; and, the result is more anti-competitive impact by Qwest upon a CLEC and its customers.

Another example is that Qwest refused to allow a PIC-freeze to be placed on Arizona Dialtone's lines. As a result, our customers experience PIC changes without their authorization and the resulting slamming on their long distance phone bills. Each time this occurs, Arizona Dialtone has to spend the time and expense to investigate and correct the PIC, and we have created a dissatisfied customer in the process. There is an easy solution to this, place a PIC-freeze on the line and then the PIC cannot be changed without written authorization, which Qwest uses all the time for its customers. But it refuses to implement a PIC-freeze for Arizona Dialtone's lines and instead contends that the problem is covered because the PIC for all of Arizona Dialtone's lines cannot be changed without Arizona Dialtone's authorization. But the fact remains that Qwest does change the PIC on Arizona Dialtone's lines without written authorization to do so.

Also, Qwest continually changes the service and sales managers for Arizona Dialtone's account. As soon as we work with one Qwest representative long enough for them to learn what is going on, they are replaced with a new person, and we move back to square one having to work through a learning curve with the new personnel.

Q. ARE YOU CONCERNED ABOUT OTHER ANTI-COMPETITIVE BEHAVIOR BY QWEST?

A. We hope Qwest will not try to "punish" us for this testimony, but we are very concerned. Given the history of anti-competitive behavior, and the apparent unwillingness of Qwest to make commitments now regarding the interpretation and specifics of the proposed Settlement, we are fearful that Qwest will continue to unfairly create problems for us both on a day-to-day operational level and a policy level.

<u>INEQUITIES IN THE PROPOSED SETTLEMENT.</u>

Q. HOW HAVE QWEST'S DELAYS IN OFFERING UNE FOR PAYPHONE LINES AND IN IMPLEMENTING THE UNE-P PRICING ORDER AFFECTED

ARIZONA DIALTONE'S POTENTIAL PARTICIPATION UNDER THE PROPOSED SETTLEMENT?

A. Qwest's conduct of delaying wholesale services and pricing creates several uncertainties and inequities in the proposed settlement.

First, the 10% discount credits under Section 3 of the proposed settlement are limited to services purchased under "47 U.S.C. Sections 251(b) and (c) (as defined by the FCC for the relevant time period)." It has always been my position that the all of the payphone services that Arizona Dialtone has been reselling under its interconnection agreement with Qwest fall squarely within these statutory sections. But Qwest's past position that UNE is not available for payphone lines creates uncertainties about the position it will take now, and Qwest has never clarified whether it now concurs with our position. From the way the proposed settlement agreement is worded, we do not know whether Qwest will argue that payphone services do not fall within these code sections and that it has been offering wholesale payphone services to CLECs as a "mere accommodation," or whether it agrees that they are covered by Section 3 of the proposed settlement. The testimony of David Ziegler that Qwest filed in support of the proposed settlement with his multiple disclaimers that he is not offering any legal interpretations is certainly no help on this issue.

The parenthetical, "(as defined by the FCC for the relevant time period)" is also very troubling. Based on this wording, apparently Qwest wants to turn the clock back to the 2001 time frame to decide what services are included under § 251(b) and (c), working only from whatever FCC orders were outstanding at that time and ignoring any FCC interpretations that were issued later.

This ambiguous wording in Section 3 of the proposed settlement coupled with Qwest's past conduct regarding payphone lines creates an open invitation for future litigation. But it can easily be clarified. Qwest knows the services that the CLECs are reselling. Presumably, it also knows which services it intends this "§ 251(b) and (c) (as defined by the FCC for the relevant time period)" clause to exclude from the 10% discount credit under Section 3 of the proposed settlement. Instead of leaving such a critical but difficult-to-define parameter within the proposed Settlement Agreement, the agreement should simply specify the list of services that Qwest sold to CLECs that are not included in the 10% discount credits. And Qwest should be required to provide the10% discounts credits for all other services purchased by the CLECs from Qwest. This straightforward clarification will provide Qwest and the Commission with certainty as to the overall impact of the settlement, and it will remove the uncertainty faced by Arizona Dialtone and the other CLECs in evaluating the 10% discount credits. There should be specific schedules sworn to by Qwest now in order to avoid problems or "game playing" later.

Also, Qwest's delays in allowing UNE services to be utilized for payphone lines have squeezed Arizona Dialtone almost entirely out of being able to participate in the access line credits and UNE-P credits under Sections 4 and 5 of the Settlement. As I explained earlier, Qwest refused to allow UNE to be utilized with payphone lines until June 2001, and then it further delayed implementing the changes until January 2002. With the majority of Arizona Dialtone's lines having not been converted to UNE-P until January 2002, this leaves Arizona Dialtone only able to participate in approximately two months worth of the Sections 4 and 5 credits under the proposed settlement.

However, after reviewing the testimony submitted by Qwest, I am now uncertain as to whether Arizona Dialtone will be able to participate in even the last two months of the

Section 4 and 5 credits. Although this is not how the proposed settlement is worded, David Ziegler of Qwest, at pages 15 and 16 of his testimony, filed August 14, 2003, states that Qwest's intent is to refuse to provide Section 5 credits to any CLEC that was not billing interexchange carriers for access charges at that time. Arizona cannot meet his unwritten criteria. As I explained above, Arizona Dialtone's transfer to UNE-P did not occur instantaneously and there was a time period of several months before our access charge tracking system was in full operation. As a result, Arizona Dialtone was unable to bill the interexchange carriers during the first couple of months of its UNE-P operations which is the only time period included in the proposed settlement agreement as it is currently worded.

Apparently, even though the proposed Settlement is not worded this way, it is Qwest's position that no Section 5 credits will be offered unless the CLEC was billing and collecting access charges at the time, and the CLEC can demonstrate that Qwest's daily usage file information was inaccurate. Mr. Ziegler does not explain in his testimony whether Qwest has a similar intent relating to the Section 4 credits as well. But I suspect it does. As a result, at least according to Mr. Ziegler's testimony, Arizona Dialtone will most likely not be able to participate at all in any of the Section 4 and 5 credits as the proposed Settlement is currently structured.

Q. WHAT CHANGES TO THE SETTLEMENT AGREEMENT DO YOU RECOMMEND TO ADDRESS THESE CONCERNS OF QWEST DELAYING THE ENTRY OF CLECS INTO THE VARIOUS LEC SERVICES MARKETS?

A. Instead of setting the time periods for the Sections 3, 4 and 5 credit baskets based on the beginning of Qwest's wrongful secret agreements, the time periods should begin after the wrongful conduct. This change will remove the benefit otherwise granted to Qwest for wrongfully delaying competition. It will allow the CLECs, who were wrongfully blocked from competing, to participate in the settlement credits at a level more commensurate with the market position they would have held but for Qwest's wrongful actions.

Also, Qwest appears to have structured the time periods of the credits based on the similar payments/credits ordered in the Minnesota Orders[1] issued by their PUC. In Minnesota, the PUC ordered Qwest to pay nearly $26,000,000 in penalties and it ordered payments or credits to the CLECs (at the option of the CLEC) without any maximum limits on the amounts. The Minnesota PUC pointed out that the penalty was not unreasonable considering Qwest and its affiliates generate $20 billion in annual revenues. On reconsideration, after analyzing certain jurisdictional issues, the Minnesota PUC scaled back the time periods of the payments/credits to coincide with the secret agreements, but it maintained its lack of any kind of a cap on the credits/payments.

I will leave the jurisdictional arguments for the attorneys to address in the context of a Commission Order if one is ultimately required, but in the context of a settlement as Qwest has proposed here in Arizona, the issue of what the Arizona Corporation Commission may or may not ultimately have the jurisdiction to <u>order</u> Qwest to do is not particularly relevant. Instead, in this context of a voluntary settlement, Qwest should agree to do what is equitable (and within its power) to correct the adverse impacts of its prior bad acts.

---

1 *See* In the Matter of Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unified Agreements, Minnesota Public Utilities Commission Docket No. P-421/C-02-197, Order Assessing Penalties, issued February 28, 2003, and Order After Reconsideration on Own Motion, issued April 30, 2003.

Arizona Dialtone is a relatively small CLEC operating in some very unique markets, however I am sure other CLECs have experienced similar adverse impacts on their entry into the competitive LEC services market. But under the proposed Settlement, Qwest is able to limit its credits to the same period as its wrongful actions and thereby benefit from its stifling of competition during that time period. In order to ameliorate the delaying effect that Qwest's wrongful actions have had, the CLECs should be able to participate in the Settlement based on the time periods after Qwest stopped its wrongful conduct.

Although Qwest still contends that it did nothing wrong, it also apparently contends that regardless of whatever it was doing in the past, it cleaned up its act with the termination of the secret agreements. I do not agree that Qwest paying its favored CLECs to terminate its secret agreements provides any indication that Qwest has stopped its wrongful conduct, but even assuming that Qwest actually did clean up its act in early 2002, the other CLECs who had been suffering under the discriminatory treatment perpetrated by Qwest should be allowed the benefit of the secret credits, but at a participation level corresponding to the time period after Qwest put a stop to its discriminatory conduct. Therefore, the Section 3 credits should be offered for the 18 month period prior to the Commission's approval of the Settlement, the Section 4 credits should be offered for the 8 months prior to the Commission's approval of the Settlement, and the Section 5 credits should be offered for the 16 months prior to the Commission's approval of the Settlement. This will allow the CLECs to participate in some of the economic benefits of the secret agreements, but also to do so based on the marketplace as it evolved for at least some extent of the time after Qwest allegedly cleaned up its act.

Then, the credits should be continued on an ongoing basis into the future to equal the full intended five year term of the secret agreements. Qwest paid its favored LECs to terminate the secret agreements early, and that payment by Qwest should not be allowed to limit its liability to the other CLECs that were not allowed to participate in the agreements and not allowed to participate in the early termination payments.

Q. HOW DO THE MAXIMUM AMOUNTS PLACED ON THE VARIOUS CLEC CREDITS AFFECT ARIZONA DIALTONE?

A. The caps placed on the CLEC credits, like many of the other more ambiguous clauses in the proposed Settlement, leave Arizona Dialtone with no way to reasonably evaluate its participation in the credits. These maximum amounts placed on each of the CLEC credit sections should be eliminated.

There is no justification for allowing Qwest to limit its credits to the CLECs by placing the CLECs at risk of having their participation in the settlement reduced to a percentage of their claims. The purpose of placing caps on the credits cannot be to provide Qwest with knowledge of its exposure under the Settlement. Qwest is fully aware of the amount of services it has sold to CLECs, and therefore it can determine with great accuracy the extent of its potential liability. We have asked Qwest for its projections, but it has failed to provide them. The numbers that Qwest is projecting should be in the record before the Commission, but—like the previously secret agreements—they are nowhere to be found.

Instead, the only possible purpose for these caps is to allow Qwest to limit its liability at the expense of the CLECs. Qwest was aware that it was granting preferential treatment to its favored CLECs when it entered into the secret agreements, and it should come as no surprise to Qwest that it would have to offer similar terms to the other CLECs. The public interest is not served by allowing Qwest to reduce its liability at the expense of the CLECs that it discriminated against, and the caps on the credits should be eliminated..

Q. HOW WILL THE REQUIREMENT FOR CLECS TO PROVIDE EVIDENCE OF INACCURATE DUF RECORDS AFFECT THEIR PARTICIPATION IN THE SETTLEMENT?

A. I can echo the concerns expressed by AT&T in its brief in Response to the Proposed Settlement. It can be very difficult for a CLEC to establish evidence of inaccuracies in Daily Usage File (DUF) records, especially for earlier time periods. Also, it is apparent from the secret agreements that Qwest had knowledge of inaccuracies in its DUF records but it chose to settle up with the complaining CLEC instead of fixing the problems in its systems.

Qwest is the party with the most information relating to the accuracy of its DUF records, not the individual CLECs. Qwest is the one with the knowledge of its own systems and with the collective knowledge gained from every complaint and any accompanying data that it received from each of the CLECs over the past years. Qwest is clearly the party that knows whether it is producing accurate DUF record information. Yet the proposed Settlement is worded as if Qwest does not know a thing about any inaccuracies unless each individual CLEC can some how prove that inaccuracies existed. Additionally, the proposed Settlement does not include any description of what evidence would be sufficient for Qwest to pay these credits.

Also, Qwest contends that it does not keep its DUF record information for more than several weeks before it is rotated off its computer systems. It seems highly inequitable for the Commission to require the CLECs to recreate records from prior time periods when Qwest does not even retain the data itself.

Q. DOES ARIZONA DIALTONE HAVE EVIDENCE OF INACCURACIES IN

QWEST'S DAILY USAGE FILE INFORMATION?

A. Yes, but only with regard to time periods after those specified in Section 5 of the proposed Settlement. We obtained the calling records for 100 of our customer's lines in the fourth quarter of 2002 and compared those records against the DUF records from Qwest for the same time period. The data revealed 8000 long distance calls missing from Qwest's DUF records. After repeated complaints to Qwest, they apparently found an error in their tracking system and corrected it in June of 2003. To check their fix, we ran another comparison of the records for the second quarter of 2003 on the same lines. That data revealed more than 13,200 missed calls in the months of April and May, and then after Qwest corrected their DUF system the number of missed long distance calls dropped to only 200 for the month of June of 2003.

Clearly something was amiss with Qwest's computer systems generating its DUF records. Qwest has not fully explained how it is that its DUF records became so inaccurate so I cannot offer an opinion as to how this evidence would reflect toward Qwest's performance during the time periods specified in Section 5 of the proposed Settlement Agreement, but this does demonstrate the anti-competitive effect of Qwest's secret agreements with their major CLECs. These kinds of issues of inaccuracies in computer generated data must be investigated and corrected over time as they occur. Being a smaller CLEC, Arizona Dialtone cannot afford to do major random sampling and testing procedures on Qwest's data. Instead, Arizona Dialtone and other CLECs of its size depend on the larger CLECs with larger sums of money at stake to work through these kinds of errors and inaccuracies requiring Qwest to continually perfect and correct its systems. But in Qwest's case this apparently did not occur. By Qwest entering into secret agreements with its major CLECs, it was able to convert its problems with inaccurate DUF records into a compromise agreement fixing its potential liability to its major

CLECs for errors and inaccuracies in its tracking systems. Instead of providing an incentive for Qwest to fix its systems on an ongoing basis and to stay on top of errors in the DUF records, Qwest was able to treat these inaccuracies in its systems as a mere cost of doing business, even if it leaves the smaller CLECs suffering from the inaccurate records that Qwest should have had the incentive to be fixing.

Arizona Dialtone, like other smaller CLECs, does not have the leverage nor the financial ability to fight all these battles with Qwest. Instead, we depend on the effects of competition in an open and level marketplace imposed on Qwest largely through the major CLECs to compel Qwest to act appropriately and fix problems when they arise, instead of settling their problems with its major CLECs through secret compromises and leaving all the smaller players having to pay to fight the battles that the Qwest's favored CLECs no longer had an incentive to fight.

Q. DOES THE REQUIREMENT FOR QWEST TO OFFER CREDITS INSTEAD OF CASH PAYMENTS TO THE CLECS UNDER THE PROPOSED SETTLEMENT CAUSE CONCERNS FOR ARIZONA DIALTONE?

A. Yes, on two levels. First, CLECs that are no longer in business will not be able to participate in the credits given in Sections 3, 4 and 5 of the proposed Settlement. Instead of credits that are of no value to a CLEC that is no longer doing business with Qwest, the Settlement should require Qwest to make cash payments to the CLECs. Additionally, the issuance of credits instead of cash payments, without any limitations on how Qwest is to apply the amounts, will allow Qwest to apply the credits first to any past due bills without any concern as to whether the outstanding bills are disputed.

In order for a CLEC to effectively utilize the credits specified in the proposed Settlement, it must be in business. This is most likely the reason Qwest was ordered to make payments or credits in the Minnesota Orders. Many CLECs have already exited the Arizona market, and Arizona Dialtone may soon be in the same situation.

Qwest has filed a revision to its PAL Tariff that is currently pending in a different docket in which it proposes to reduce its payphone line rate to a level significantly below even a residential line. Arizona Dialtone is Qwest's only significant competitor for payphone lines in Arizona. If Qwest is successful in reducing its PAL rates to such low levels—below its residential rates—below its UNE-P rates—and below its similar rates in other states—Arizona Dialtone may no longer be in business, or at least we may not be operating in a form anywhere close to the current business. As with other CLECs that are no longer operating, if Arizona Dialtone goes out of business, under the wording of the proposed Settlement, Qwest will wind up paying us nothing. This situation is not in the public interest, as it rewards Qwest for its wrongful conduct. In order to eliminate this backwards incentive, the proposed Settlement should be modified to require Qwest to make cash payments to the CLECs instead of credits.

Also, the proposed Settlement should be modified to clarify that Qwest cannot apply any of the credits to outstanding bills that the CLEC has disputed. If this clarification is not made, Qwest will first apply any credits to any outstanding amounts that have been billed to the CLEC. This allows Qwest to undermine the only leverage that CLECs have to get Qwest to voluntarily correct billing errors, which is to dispute the bill and refuse to pay it. To eliminate this inequitable effect, the proposed Settlement should include an additional provision barring Qwest from applying and credits/payments to any billings that are disputed by the CLEC.

Q. HOW DOES THE RELEASE LANGUAGE INCLUDED IN THE PROPOSED SETTLEMENT AFFECT ARIZONA DIALTONE?

A. The scope of the releases included under the CLEC credits sections should be defined with more certainty. They are currently defined only by the very broad scope of the Commission's Dockets, which leaves Arizona Dialtone and the other CLECs unable to evaluate the claims that they are releasing should they choose to participate in the Settlement.

For example, Qwest's inaccurate DUF record system has caused Arizona Dialtone to expend significant resources investigating and correcting the problems, and it directly caused significant damages in lost access revenues that we were unable to bill to the IXCs. However, Qwest's secret agreements that are the subject of the Commission's secret agreements Docket dealt with issues of inaccurate DUF records. By releasing any claims relating to the secret agreements Docket, is Arizona Dialtone also releasing its inaccurate DUF records claims? They certainly should not be, at least not to the extent that the Section 5 credits are for different time periods than our inaccurate DUF records claims. And this is just one example of the multitude of varying issues that were addressed in the Commission's Dockets that then imply releases that are far too broad in scope.

At a minimum, the releases should be narrowly defined for each of the three credit sections to include only the claims that are the basis of the particular credits, they should be limited to the periods applicable for each credit section, and the CLEC should only be required to execute the particular release for the specific credits that the CLEC is electing to receive. For example, the released claims should be defined in each section as only those claims relating to Qwest's discriminatory discounting, local call termination billing, and its inaccurate DUF records for each of the respective time periods. Then, the CLEC should only be required to execute a release relating to the particular credits that the CLEC elects to participate in.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

STATE OF ARIZONA)
County of Maricopa)

AFFIDAVIT OF THOMAS W. BADE.

THOMAS W. BADE, being first duly sworn upon his oath, deposes and states as follows:

1. My name is Thomas W. Bade. I am the President of Arizona Dialtone, Inc. I have caused to be filed written testimony on behalf of Arizona Dialtone, Inc., in opposition to the proposed Settlement in Docket Nos. RT-00000F-02-0271, T-00000A-97-0238, and T-01051B-02-0871

2. I hereby swear and affirm that my answers contained in the attached testimony to the questions asked therein are true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.

Thomas W. Bade

SUBSCRIBED AND SWORN to before me on this 27 day of August, 2003.

CARRIE RANGES
Notary Public - Arizona
Maricopa County
My Commission Expires
July 23, 2006

Notary Public

My Commission Expires: