

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



ORIGINAL

BRIAN C. McNEIL
Executive Secretary

RECEIVED

2003 SEP 11 P 3: 28

AZ CORP COMMISSION
DOCUMENT CONTROL

ARIZONA CORPORATION COMMISSION

September 11, 2003

Arizona Corporation Commission

DOCKETED

SEP 11 2003

Jane Rodda
Administrative Law Judge
Arizona Corporation Commission
400 West Congress Street
Tucson, AZ 85701

DOCKETED BY	CR
-------------	----

Re: Proposed Settlement Qwest Corporation (271 Sub-Docket), T-00000A-97-0238;
Qwest Corporation (Compliance with Section 252), RT-00000F-02-0271;
Qwest Corporation (Order to Show Cause) T-01051B-02-0871

Dear Judge Rodda,

The following are questions regarding the proposed settlement that I would like addressed during the hearing:

Terms and Conditions

Section 2 - Voluntary Contributions.

- 2.1 What tax benefits does Qwest intend to take advantage of through the "voluntary contribution" of \$6,000,000.00? Please quantify the anticipated savings from such for Qwest. Please explain how considering Qwest's anticipated benefits, this is an appropriate consequence / resolution in these matters.

- 2.2 On page 4, the first full paragraph indicates that the "voluntary contribution" amount shall be subject to increase if the Minimum Settlement amount is not reached. When is it anticipated that this final determination with regard to satisfying the Minimum Settlement amount will be made?

- 2.3 In that same paragraph the language goes on to state "Qwest agrees that all such investments shall be in addition to any investments, construction or work already planned by Qwest." How is Staff planning on confirming such an avowal? What time frame does "already planned" anticipate i.e. is that at the time of Qwest signing the settlement or the Commission's final action on the Settlement, etc.?

- 2.4 Page 4, second full paragraph. When did the parties anticipate that the Commission would determine the percentage allocation, simultaneous with approval of

the Settlement? If so, what evidence did the parties intend to provide to aid the Commission in making such allocations? If this decision is to be made at a later date, when and through what mechanism do the parties envision such a decision request to be brought before the Commission? Wouldn't it be more advantageous to have Qwest submit its anticipated allocations for review by the Commission? Wouldn't such a submission make this contribution more "voluntary" and potentially effect a determination on qualifications for tax benefits for Qwest contribution?

- 2.5 Please describe what the parties envisioned from the Commission when the Settlement states "they will request that the Commission provide guidance on the allocations of funds among the categories prior to submission of the project lists by the parties." What is the practical difference between the sentence that indicates the Commission will determine the percentage allocation and this one that states that the Commission will provide guidance on the allocation?

- 2.6 Please describe the mechanism that will provide the forum for the Commission to act as described in the second paragraph on page 4 when the settlement states "The Commission shall have the discretion to revise such allocations on a project by project basis." As well please describe how it will be determined if Qwest has already spent the allocated funds or has contractually committed the funds. What evidence did the parties envision providing the Commission to make such a determination? It appears that the parties anticipate project suggestions will be submitted by an entity other than Qwest. What entities are included in the term "any other signatory" used in the final paragraph on page 4?

- 2.7 Page 5, lines 4 - 6 states "Qwest shall also be required to provide Staff with such additional information on those projects as well as other projects identified by Staff, to allow Staff to make its determinations in an informed manner." Please define the terms "those projects" and "other projects". Please describe the nature of the determination that Staff will be making as referenced to here.

- 2.8 Page 5, lines 6-7 states that Staff will establish that the projects are in addition to any construction and work already planned by Qwest. Please indicate whether the parties agree that the previously planned construction/ work would mean construction prior to Qwest's signing of the agreement or prior to the Commission Decision in these matters. Please define the terms "construction" and "work" in this context. What information was Staff planning to require Qwest to submit to makes its initial determination of what projects were previously planned?

- 2.9 Page 5 the, First full paragraph uses the term "approved projects" in the first line, please define this term.

- 2.10 Please distinguish between the statement on page 4 that conveys "The Commission ... [s]hall have the discretion to revise such allocations on a project by

opportunity to withdraw their executed releases described in the last paragraph on page 6 and lines 1-3, page 7?

- 3.4 Is there a deadline for an eligible CLEC to enter participation of the Discount Credits program. If yes, what notice will be given to eligible CLECs and when is that deadline? If no, what will happen if some CLECS are paid their fully requested amount and then additional eligible CLECS enter causing the aggregate Discount Credit amount to exceed the cap amount?

- 3.5 Please explain why such a vague and broad release (as described in the last paragraph on page 6 through lines 1-3, page 7) is an appropriate requirement for each eligible CLEC to participate in the Discount Credits program?

Section 4. Access Line Credits.

- 4.1 Please describe how the parties arrived at the \$2.00 per month rate provided in line 15 of page 7.

- 4.2 Please explain why a cap of \$660,000.00 is appropriate and determined with regard to the Access Line Credits. Were any "eligible" CLECs involved in setting this cap? If not, please explain how Due Process was met, with regard to the CLECs?

- 4.3 Was a survey conducted to determine the estimated aggregate amount the Access Line Credits would be if every eligible CLEC participated in the Access Line Credit payment? If so, please provide that figure. As well please describe the manner in which eligible CLECs will be given notice of this information prior to making their decision on opting into the settlement Access Line Credits program?

- 4.4 Page 8, lines 8-12, provides that if the aggregate access line credits accumulate beyond the stated cap, the cap amount will be shared by all eligible CLECs on a percentage basis. Please explain why this is in the public interest? If the eligible CLECs can demonstrate a right to a specific amount under this Access Line Credit provision, explain how due process is served by binding their right to all others in their field. Also explain when the cut-off date will occur for determining if the cap has been exceeded by the aggregate Access Line Credits. Please describe what entity will make the final determination of whether the cap has been exceeded and what notice will be given to the eligible CLECs of such. After such notice, will eligible CLECs be given an opportunity to withdraw their executed releases described in the last paragraph on page 7 and lines 1-2, page 8?

- 4.5 With regard to the deadline for an eligible CLEC to enter participation of the Access Line Credits program, as described on page 8, subsection B. Is that the cut-off date for a CLEC to opt-in the Access Line Credits program? If yes, what notice will be given to eligible CLECs of when the deadline expired? If no, what will happen if some CLECS are paid their fully requested amount and then additional eligible CLECS enter causing the aggregate Access Line Credit amount to exceed the cap amount?

- 4.6 Please explain why such a vague and broad release (as described in the last paragraph on page 7 through lines 1-2, page 8) is an appropriate requirement for each eligible CLEC to participate in the Access Line Credits program?

- 4.7 Turning to subsection D on page 9, what entity will determine if CLEC has reasonably complied with the settlement Access Line Credits by providing Qwest any necessary information? What entity will determine what information is necessary?

Section 5. UNE-P Credits.

- 5.1 Please describe how the parties arrived at the \$13.00 per month rate provided in the last paragraph of page 9 and the \$16.00 per month rate provided on line 1 of page 10.

- 5.2 Please explain why such a vague and broad release (as described on lines 10-13, page 10) is an appropriate requirement for each eligible CLEC to participate in the UNE-P Credits program?

- 5.3 Please explain why a cap of \$550,000.00 is appropriate and determined with regard to the UNE-P Credits. Were any "eligible" CLECs involved in setting this cap? If not, please explain how Due Process was met, with regard to the CLECs?

- 5.4 Was a survey conducted to determine the estimated aggregate amount the UNE-P Credits would be if every eligible CLEC participated in the UNE-P Credit payment? If so, please provide that figure. As well please describe the manner in which eligible CLECs will be given notice of this information prior to making their decision on opting into the settlement UNE-P program?

- 5.5 Page 10, lines 19-23, provides that if the aggregate discount credits accumulate beyond the stated cap, the cap amount will be shared by all eligible CLECs on a percentage basis. Please explain why this is in the public interest? If the eligible CLECs can demonstrate a right to a specific amount under this UNE-P Credit provision, explain how due process is served by binding their right to all others in their field. Also explain when the cut-off date will occur for determining if the cap has been exceeded by the aggregate UNE-P Credits. Please describe what entity will make the final determination of whether the cap has been exceeded and what notice will be given to

the eligible CLECs of such. After such notice, will eligible CLECs be given an opportunity to withdraw their executed releases described on lines 10-13, page 10?

- 5.6 With regard to the deadline for an eligible CLEC to enter participation of the UNE-P Credits program, as described on page 11, subsection B. Is that the cut-off date for a CLEC to opt-in the UNE-P Credits program? If yes, what notice will be given to eligible CLECs of when the deadline expired? If no, what will happen if some CLECS are paid their fully requested amount and then additional eligible CLECS enter causing the aggregate UNE-P Credit amount to exceed the cap amount?

- 5.7 Turning to subsection C on pages 11 - 12, what forum and potential remedy did the parties anticipate a CLEC pursuing if they disagreed with Qwest's finding that the DUF files it provided were accurate?

- 5.8 Turning to subsection D on page 12, what entity will determine is CLEC has reasonably complied with the settlement UNE-P Credits by providing Qwest any necessary information? What entity will determine what information is necessary?

Section 6. Additional Voluntary Contributions.

- 6.1 In Section 6 it states "Qwest may deduct amounts attributable to Eligible CLECs that do not execute a release of any and all claims against Qwest from the amount of Discount Credits, Access Line Credits, and/or UNE-P Credits owed under this Agreement, for a period of one year..." Do the parties agree that this only applies if the Minimum settlement amounts are not met as set out in Sections 3, 4, and 5? If this is accurate why is this an appropriate exception to the requirement that the remainder of the Minimum settlement amounts be additional voluntary contributions?

- 6.2 Please define the term "claim" and in what jurisdiction such would be brought as it is used in line 6 on page 13.

Thank you for your time and attention in this matter.

Sincerely,



William A. Mundell, Commissioner
Arizona Corporation Commission

cc: Docket Control