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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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

DOCKET NO. RT-00000F-02-0271

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

DOCKET NO. T-00000A-97-0238

ARIZONA CORPORATION COMMISSION

DOCKET NO. T-01051B-02-0871

Complainant,

QWEST CORPORATION,

NOTICE OF FILING

Respondent.

18 The Arizona Corporation Commission Staff ("Staff") hereby files its Late-Filed Exhibits S-3
19 and S-4. S-3 contains Staff's written responses to the questions set forth in Commissioner Mundell's
20 August 1, 2003 letter. S-4 contains Staff's corrections/revisions to Time Warner Exhibit TW-4.

21 RESPECTFULLY SUBMITTED this 9th day of October, 2003.

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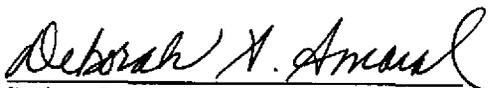
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EXHIBIT S-3

Staff's Responses to Commissioner Mundell's August 1, 2003 Letter

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.

Staff believes that Qwest is best suited to answer this question.

- 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?

If all CLEC's sign the release of claims the final determination will be made one once Qwest's final report issues in 240 days. (Paragraph 7)

If not all CLECs sign the release of claims, the final determination will be made seventeen months from the Effective Date of the Commission Decision Approving the Settlement. (Paragraphs 6 and 7) Paragraph 7 provides that Qwest will produce a final written report 60 days after the one year period following the Effective Date of the Commission Decision Approving the Settlement. Paragraph 6 provides that Qwest will make all contributions no later than 90 days from the submission of that report.

- 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.?

Staff plans on using dialog, discovery, and research to confirm that any selected projects are in addition to those already planned. On a case by case basis depending on the project in question, Staff will issue discovery regarding current and past construction/investment plans, invoices for relevant purchases, and historical deployment rates, etc.

The time frame anticipated by "already planned" is the time the Settlement is approved by the Commission.

- 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?

The parties believe the Commission should have the discretion to determine the percentage allocation at the time of its choosing. Thus the Commission may determine the percentage allocation at the time it issues an Order approving the Settlement to guide the parties in their selection of specific projects, or the Commission also has the flexibility to wait until the list of projects is submitted or the parties file their proposed project selections with the Commission. There are several mechanisms that could be utilized to bring a request before the Commission to determine the allocations: the Commission could do so at the time it issues an Order approving the Settlement, the Commission could do so on its own motion, the parties could file a motion, jointly or individually requesting the Commission make the determination at the time the list of projects is filed or at the time the parties themselves come to agreement on specific projects.

Since Qwest has voluntarily entered into the Settlement which specifies that the choice of allocation is up to the Commission, the voluntary nature of the settlement is not affected by having the Commission make the decision. Qwest is best able to answer questions on the tax ramifications of any particular project.

- 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?

There is no practical difference between these sentences.

- 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?

The Commission can act on its own motion to revise the allocations on a project by project basis. Other likely procedural vehicles include the parties filing a motion jointly or individually requesting the Commission to make the determination at the time the list of projects is filed or at the time the parties themselves come to agreement on specific projects. Also, the Commission

could revise such allocations if requested to resolve a dispute between Qwest and Staff on the project selections.

If Qwest claims that it has already spent the allocated funds or contractually committed those funds it should be able to produce invoices and contracts to verify this fact.

The term "any other signatory" refers to Staff, since no other party signed the Agreement. However, this does not preclude the Commission from ordering projects which have been proposed by any party.

- 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.

The term "those projects" refers to projects proposed by Qwest. The term "other projects" refers to projects proposed by any party other than Qwest, i.e., Staff and/or the Commission.

The nature of the determination will vary greatly depending on the projects that are proposed.

- 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?

The parties agree that previously planned construction work means construction planned, scheduled or undertaken prior to the Commission's approval of the Settlement.

The terms "construction" and "work" refer to any actions undertaken by Qwest to implement a given project.

Staff plans on using dialog, discovery, and research to confirm that any selected projects are in addition to those already planned. On a case by case basis depending on the project in question, Staff will issue discovery regarding current and past construction/investment plans, invoices for relevant purchases, and historical deployment rates, etc.

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

The term "approved projects" refers to projects that the Director of the Utilities Division and Qwest agree should be implemented and/or projects approved by the Commission.

- 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 project basis" and the statement on page 5 which indicates "Within each investment category, approved projects shall be determined by mutual written agreement of the Director of the Commission's Utilities Division and Qwest's Arizona president"?

The Settlement gives the Commission the option to select individual projects. If the Commission chooses not to select individual projects they will be decided upon through agreement between the Director of the Commission's Utilities Division and Qwest's Arizona president. If no such agreement can be struck, the selection of projects will be escalated to the Commission for resolution.

- 2.11 On page 5, line 16, what entity will determine if "any additional facilities, construction or development of new programs" will be required? Please define each of the following terms: "facilities", "construction", "development", and "new programs".

Qwest will make the initial determination regarding the need for new facilities, construction, or programs. Staff will verify that determination.

The terms "facilities", "construction", "development" and "new programs" have their normal straightforward meanings in this context.

- 2.12 On page 6, lines 4-5, please define the term "not adequately served" with relation to the definition of "Unserved Area". Also on lines 7-8, please define "Qwest wireline telephone facilities available".

"Not adequately served" refers to areas that have deficiencies in service as determined by the Commission. "Qwest wireline telephone facilities available" refers to the availability of Qwest telephone service provided over wireline facilities, that is, copper or fiber optic wire as opposed to cellular wireless facilities.

- 2.13 What cut-off date will be used to determine what Qwest would have invested absent this agreement as reflected in the second full paragraph on page 6? Please describe the method and anticipated tools Staff will use to determine the "base amount" as described in lines 8 -9, page 6. Please define the term "incremental amount".

The cut off date is the date that the Commission approves the Settlement.

Staff plans on using dialog, discovery, and research to confirm that any selected projects are in addition to those already planned, that is, in addition to the base amount. On a case by case basis depending on the project in question, Staff will issue discovery regarding current and past construction/investment plans, invoices for relevant purchases, and historical deployment rates, etc.

The term "incremental amount" refers to the amount of investment made pursuant to the Settlement. All such investment would be in addition to the base amount.

- 2.14 Please explain why the word "would" is used instead of the word "shall" on line 13, page 6.

In this context, the words "would" and "shall" are synonymous. However, Staff would have no objection to changing the word "would" to "shall".

Section 3. Discount Credits.

- 3.1 Please explain why a cap of \$8,910,000.00 is appropriate and determined with regard to the Discount Credits. Were any "eligible" CLECs involved in setting this cap? If not, please explain how Due Process was met, with regard to the CLECs?

The determination of the cap was addressed by Qwest. Staff would note that the amount is consistent with Qwest's response to a Staff Data Request. During the development of the settlement, active CLECs were afforded the chance to participate.

- 3.2 Was a survey conducted to determine the estimated aggregate amount the Discount Credits would be if every eligible CLEC participated in the Discount 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 Discount Credits program?

In response to Staff data request 10 – 012S1 submitted in Docket No. RT-00000F-02-0271 Qwest calculated that a payment of 10% of all 251 (b) and (c) items in Arizona for the time period January 1, 2001 to June 30, 2002 to be **** REDACTED ****.

Staff will insure that the notice Qwest sends to the CLECs is clear, accurate and timely.

- 3.3 Page 7, lines 9-13, provide 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 Discount 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 Discount 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 6 and lines 1-3, page 7?

If an eligible CLEC can demonstrate a right to a higher amount than what they would be paid by participating in the Settlement Agreement, they have the option to pursue that right outside of the Settlement Agreement. The CLEC has the discretion not to be a signatory to the Agreement.

Paragraph 3 of the Settlement provides that Qwest shall issue the credits to all Eligible CLECs within 180 days of the effective date of the order approving the Settlement. Qwest will initially determine whether the cap has been exceeded. Staff will verify Qwest's determination. Staff will insure that notice to the CLECs regarding the cap is clear, accurate, and timely. Eligible CLECs will not be required to sign the release until they know whether the cap has been exceeded or not, i.e., until they know exactly how much they would receive through the settlement.

- 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?

There will be a deadline for Eligible CLECs to enter participation. Staff will insure that notice of that deadline from Qwest will be clear, accurate, and timely.

- 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?

Staff and Qwest both believe that it would be appropriate for the Commission and/or Staff to review and approve the release. Staff has indicated its willingness to do so before the Settlement is approved by the Commission. The Commission at its option could also review and approve the release prior to approval of the final settlement as well. Staff believes that the release should not be overly broad but should be tailored to the specific dockets.

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.

The \$2.00 per month rate is based on the provisions of the "Switched Access Minute Reporting Letter" from Qwest to Eschelon dated July 3, 2001. Staff's position is that that letter contains provisions that should have been included in a publicly filed interconnection agreement.

- 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?

The development of the cap was addressed by Qwest. During the development of the settlement CLECs were afforded the chance to participate.

- 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?

Qwest addressed development of the estimated aggregate amount of the Access Line Credits. Paragraph 3.A. of the Settlement provides that Qwest will notice the CLECs within 30 days of Commission approval of the Settlement. Staff will insure that the notice from Qwest will be clear, accurate, and timely.

- 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?

Paragraph 4 parts A., B., and C. of the Settlement provides that Qwest shall inform all Eligible CLECs of the amount they are owed pursuant to the Settlement within 150 days of the effective date of the order approving the Settlement. Qwest will determine whether the cap has been exceeded and Staff will verify that determination. Staff will insure that notice to the CLECs regarding the cap is clear, accurate, and timely. Eligible CLECs will not be required to sign the release until they know whether the cap has been exceeded or not, i.e., until they know exactly how much they would receive through the settlement.

- 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?

The deadline described on page 8, subsection B is the cut-off date for a CLEC to opt-in to the Access Line Credits. Staff will insure that CLECs receive clear, accurate, and timely notice from Qwest.

- 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?

Staff and Qwest both believe that it would be appropriate for the Commission and/or Staff to review the release before it is put in place. Staff has indicated its willingness to do so before the Settlement is approved by the Commission. The Commission at its option could also review

and approve the release prior to approval of the final settlement as well. Staff believes that the release should not be overly broad but should be tailored to the specific dockets.

- 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?

Qwest will make the initial determination whether a CLEC has provided Qwest any necessary information. Disputes will be resolved by the Staff.

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.

The credits are based on the provisions of agreements entered into between Qwest and Eschelon which were the subject of the 252(e) docket. Specifically, the Switched Access Minute Reporting Letter from Qwest to Eschelon dated July 3, 2001 provided for \$2 credits per line (unbundled loop or UNE-P). These credits were intended to address issues related to access records for Qwest's intraLATA toll traffic terminating to customers served by Eschelon's switches.

- 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?

Staff and Qwest both believe that it would be appropriate for the Commission or Staff to review the release before it is put in place. Staff has indicated its willingness to do so before the Settlement is approved by the Commission. The Commission could at its option also review and approve the release prior to approval of the final settlement as well. Staff believes that the release should not be overly broad but should be tailored to the specific dockets.

- 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?

The development of the cap was addressed by Qwest. During the development of the settlement CLECs were afforded the chance to participate.

- 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?

Qwest is best suited to answer questions regarding the estimated aggregate amount of the Access Line Credits. Paragraph 5.A. of the Settlement provides that Qwest will notice the CLECs within 30 days of Commission approval of the Settlement. Staff will insure that the notice from Qwest will be clear, accurate, and timely.

- 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?

Paragraph 5, parts A., B., and C. of the Settlement provides that Qwest shall inform all Eligible CLECs of the amount they are owed pursuant to the Settlement within 150 days of the effective date of the order approving the Settlement. Qwest will determine whether the cap has been exceeded and Staff will verify that determination. Staff will insure that notice to the CLECs regarding the cap is clear, accurate, and timely. Eligible CLECs will not be required to sign the release until they know whether the cap has been exceeded or not, i.e., until they know exactly how much they would receive through the settlement.

- 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?

Paragraph 5 part C. of the Settlement provides that Qwest shall inform all Eligible CLECs of the amount they are owed pursuant to Paragraph 5 of the Settlement within 60 days of Qwest's receipt of the necessary information from the CLEC. Qwest will determine whether the cap has been exceeded and Staff will verify that determination. Staff will insure that notice to the CLECs regarding the cap is clear, accurate, and timely. Eligible CLECs will not be required to sign the release until they know whether the cap has been exceeded or not, i.e., until they know exactly how much they would receive through the settlement.

- 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?

CLEC's that participate in the Settlement can pursue such claims with the Commission. The potential remedy would be payment pursuant to Paragraph 5 of the Settlement.

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

Qwest will make the initial determination whether a CLEC has provided Qwest any necessary information. Staff will resolve any disputes that arise.

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?

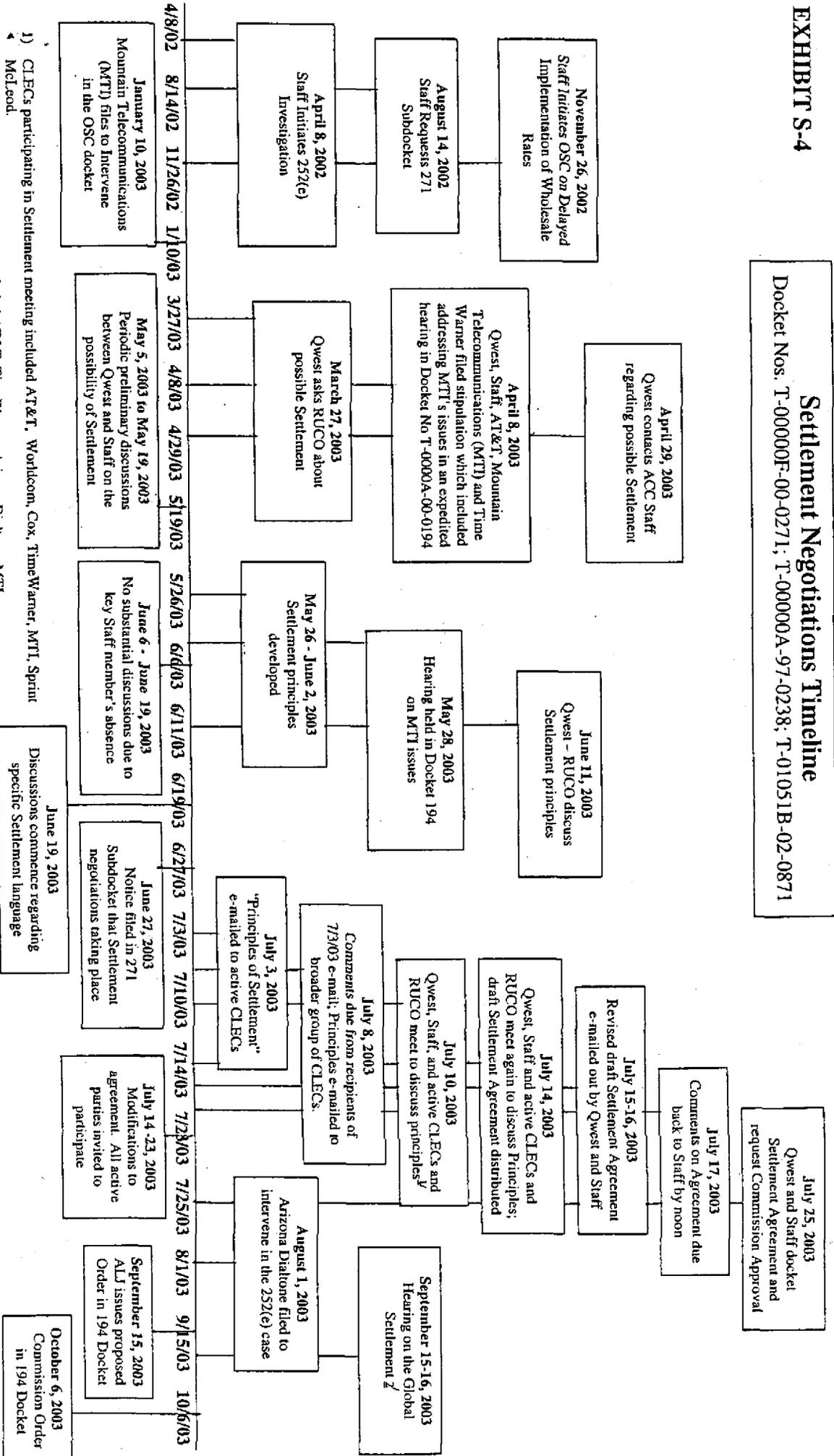
No, the hold back applies whether the minimum settlement amounts are met or not.

- 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.

The term "claim" refers to any request for compensation from Qwest made by a CLEC in proceedings before the Commission, before a court, or before an arbitrator as provided for in the CLEC's interconnection agreement.

EXHIBIT S-4

Settlement Negotiations Timeline
 Docket Nos. T-00000F-00-0271; T-00000A-97-0238; T-01051B-02-0871



- 1) CLECs participating in Settlement meeting included AT&T, Worldcom, Cox, TimeWarner, MTI, Sprint
 & McLeod.
- 2) CLECs participating in Hearing included AT&T, TimeWarner, Arizona Dialtone, MTI