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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

Arizona Corporation Commission

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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,

Docket No. T-01051B-02-0871

Complainant,

v.

QWEST CORPORATION,

Respondent.

ARIZONA DIALTONE, INC.'S

RESPONSE TO POST HEARING BRIEFS

REGARDING THE PROPOSED SETTLEMENT

1. INTRODUCTION

Arizona Dialtone believes that the proposed Settlement Agreement as written is too indefinite, contains too many unknowns, and invites too much "game playing" to be in the public interest. However, with a number of basic and commonsense modifications, the proposed Settlement Agreement can be molded into an agreement that truly serves the public interest while resolving the pending Dockets.

1 Some of the parties do not seem to want a settlement. And Qwest appears to argue for
2 continued business as usual: Management saying one thing while its legal department does
3 another; not making full and straightforward disclosures; and creating a “settlement” with a
4 multitude of processes, which invites game playing and/or further litigation. Qwest even
5 continues to argue it has done no wrong, as if everything it is offering is a mere accommodation
6 to its customers.

7 The Commission should carefully craft modifications to the proposed Settlement
8 Agreement that cut through all the noise. For example, if a proposed settlement term causes
9 delay and/or uncertainty without being absolutely necessary and without serving a compelling
10 purpose, then eliminate it or use a less cumbersome alternative. Do not pretend to resolve one
11 set of disputes by needlessly fabricating a whole new set to litigate.

12 If this settlement cannot be properly modified, then it is not in the public interest and
13 should be rejected. However, with some corrections and modifications the settlement can be
14 made to work. The proposed order should recommend approval of the settlement, but only with
15 the following clarifications and modifications:

- 16 ● Adopt Qwest’s proxy amounts. This removes multiple proof and documentation
17 concerns and creates certainty in the amounts.
- 18 ● Allow Arizona Dialtone to opt-in to the Global Crossing secret agreement. Qwest’s
19 management believes that this is available under the settlement, but its legal department
20 disagrees.
- 21 ● Fix the overly broad release. It should prevent double recovery for the claims being
22 settled, and should be a separate release for each category of CLEC Credit.
- 23 ● Remove the credit ceilings. The risk of Qwest’s secret projections should be on Qwest,
24 not on the CLECs.
- 25 ● Verify the reasonableness of Qwest’s secret numbers behind the minimum CLEC credits.
26 If Qwest is only paying about 25% of the CLEC credits to the CLECs, something is

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seriously wrong.

- Extend the CLEC credits to the full duration of the secret agreements. This allows the CLECs to participate in the full economic effect of the secret agreements.
- Make a finding that the CLECs are “Eligible.”
- Order Qwest to promptly pay undisputed credits.
- Include cash payments where CLECs are no longer in business.
- Include pre and post judgment interest, which is appropriate to compensate the CLECs for the delays wrongfully caused by Qwest and to give an incentive to Qwest to pay the credits promptly
- Include Qwest’s consent to the jurisdiction of the Arizona Corporation Commission as the proper forum for resolution of any disputes related in any way to this Settlement.

Attached as Exhibit 1 is a summary of the specific modifications and findings recommended in this Brief. Attached as Exhibit 2 for the Administrative Law Judges’ reference is a strike through and underlined copy of Qwest’s draft release compared to the release recommended by Arizona Dialtone. Also, copies of Arizona Dialtone’s recommended Sections 3, 4, and 5 Releases are attached as Exhibits 3, 4, and 5.

2. INSTEAD OF PROVIDING CERTAINTY AND FINALITY, THE PROPOSED SETTLEMENT AGREEMENT IS PACKED WITH UNNECESSARY ISSUES OF PROOF AND DOCUMENTATION.

Under a reasonable settlement there should be clarity and specificity regarding the CLEC Credits. Qwest should have an incentive to settle up and pay them promptly. But to the contrary, under the proposed Settlement Agreement, the CLEC Credits are not well defined, Qwest has every incentive to minimize any credits to the CLECs, and it has no incentive at all to act promptly.

While the payments to the State and the Voluntary Contributions are well defined amounts, the CLEC Credits are anything but clear. The proposed Settlement Agreement provides for Qwest to pay a definite amount to the State; \$ 5,197,000.00 to be paid within 30

1 days. It also provides for Qwest to spend a definite amount for Voluntary Contributions;
2 \$6,000,000.00 with the list of projects proposed within 30 days.

3 At first blush, the proposed Settlement Agreement seems to specify an amount for each of
4 the CLEC credits; \$8,100,000.00 for Section 3 Discount Credits, \$600,000 for Section 4 Access
5 Line Credits, and \$500,000.00 for Section 5 UNE-P Credits. But the proposed Settlement
6 Agreement does not mandate that Qwest pay these amounts to the CLECs. Instead, the CLECs
7 must first prove up their credit claims and prove up Qwest's wrongdoing. The CLECs must
8 recreate their access billing and collection records from years ago. They must demonstrate that
9 Qwest's DUF records from three years ago were faulty. They must prove up the amount of
10 access collections from the IXCs and convince Qwest that their efforts to bill access under
11 Qwest's faulty DUF records were sufficient to warrant Qwest's blessing. Then they must wait
12 many more months until Qwest has gone through this process with each CLEC to determined the
13 total amount of claims so that the effect of a possible pro-rata reduction of the credits is known.
14 It is only after this whole proof process is complete that Qwest will begin to credit the amounts to
15 the CLEC's without any requirement to pay a penny of interest or any other incentive for Qwest
16 to proceed promptly.

17 Under the proposed Settlement Agreement, avoiding a CLEC credit presents a double
18 positive incentive for Qwest. Whether or not the total CLEC credits fall short of the minimums,
19 the pour over provisions in Section 6 apply to the funds that Qwest avoids paying out in CLEC
20 Credits. Where does this money go? Although Section 6 does not contain the clearest language,
21 apparently Qwest is allowed to keep any credits for one year if the CLEC merely fails to claim
22 the credit. Also, under Section 6, Qwest can keep the credit entirely, if the CLEC rejects the
23 settlement and release and instead brings a claim against Qwest. Section 6 also provides that in
24 the event that Qwest should not pay out the minimums specified for the CLEC Credits, any
25 remaining amounts that Qwest is able to avoid paying to the CLECs are then rolled over to
26 Qwest's infrastructure improvements and other public interest projects under Section 2. The

1 incentive to Qwest in this agreement is twofold to avoid paying out a CLEC Credit. First, Qwest
2 avoids paying its competitor, and at the same time, Qwest rolls the money into Section 2
3 expenditures which include either additional rate base investment for itself, or potential public
4 relations expenditures.

5 The key to cleaning up these reverse incentives is to establish certainty in the proposed
6 Settlement—certainty as to both the amount of the CLEC credits and certainty as to the payment
7 of the CLEC credits.

8 **3. ADOPT QWEST'S PROXY NUMBERS—THEY ARE KNOWN, CERTAIN, AND**
9 **APPROPRIATE—AND THEY ARE THE BASIS OF QWEST'S OWN**
10 **EVALUATION OF THE SETTLEMENT.**

11 In evaluating the economic impact of the proposed Settlement Agreement, Qwest used
12 “proxy” amounts for the CLEC credits. These “proxies” that Qwest has already calculated are its
13 own average monthly per-line credits that Qwest actually paid to Eschelon under the secret
14 agreements. Most of the documentation mess currently specified in the proposed Settlement
15 Agreement can be eliminated by simply adopting these “proxy” amounts (\$0.96, \$2.41 and
16 \$3.15), that Qwest has already adopted.

17 The proxy amounts are the appropriate level for Qwest to pay to the CLECs. Through
18 negotiations with its “dangerous CLECs,” Qwest established the appropriate level to discount or
19 subsidize their competitors’ business operations. Some contend this was done to quiet Qwest’s
20 dangerous competitors, and Qwest contends it was done merely to resolve Qwest’s errors. But
21 either way, absent Qwest having actually offered the same deal to the other CLECs at the time as
22 Qwest should have done, the proxy amounts that were actually paid by Qwest are an appropriate
23 substitute to be credited by Qwest to the harmed CLECs. If Qwest was paying its “dangerous
24 CLECs” hush money, it was certainly wrong to do so, and it is appropriate for Qwest to
25 voluntarily pay (through this settlement) a similar level of subsidy to its other disadvantaged
26 CLECs. On-the-other-hand, if Qwest was merely paying its “dangerous CLECs” an appropriate
amount to compensate for Qwest’s errors, then it stands to reason that the other CLECs were

1 being harmed to a similar level and should receive a similar level of credits.

2 Given that Qwest's "dangerous CLECs" were among its largest, Qwest surely did not
3 enter into the secret agreements committing to pay substantial amounts of money to its
4 competitors without careful study and analysis of the evidence at the time. Also it would be
5 unreasonable to assume that the less favored CLECs that will be participating in this settlement
6 were somehow doing appreciably better than Eschelon at billing access such that they would
7 somehow be due a lesser credit, if a similar arrangement been offered to them. Instead, if
8 anything, Eschelon's access billing and collections should have been better than most smaller
9 CLECs. Therefore, if anything, Qwest's proxy amounts actually favor Qwest by potentially
10 under-compensating the other CLECs. But the benefit of using the proxy amounts for the
11 CLECs, and for the Commission, is that the less favored CLECs do not have to litigate with
12 Qwest over the multitude of documentation issues and proving up Qwest's inaccurate records
13 and the like. Instead, given the lines per month which is easy to establish, it is simple math to
14 arrive at the credit amount—no delays, no disputes.

15 The proxy amount for the Section 4 Access Line Credit is given at page 9 of the proposed
16 Settlement Agreement, \$0.96 per line per month. Qwest's expert, Mr. Ziegler, testified at the
17 hearing that the proxy amounts for the Section 5 UNE-P Credits were \$2.41 for November 1,
18 2000, through June 30, 2001, and \$3.15 for July 1, 2001, through February 28, 2002. Transcript
19 dated September 16, 2003, page 122, lines 4-8.

20 We see no value in maintaining the complex proof and documentation requirements
21 specified in Sections 4 and 5 of the proposed Settlement Agreement. Instead, these proxy
22 amounts, \$0.96, \$2.41 and \$3.15, should be used to calculate the amount of CLEC Credits
23 offered by Qwest under Sections 4 and 5 of the proposed Settlement Agreement without any
24 additional questions. There is no need for further documentation, no need for discovery disputes,
25 no need for arguments about how well one CLEC or another has been able to discover Qwest's
26 malfeasance with inaccurate DUF records, and no need for any further calculations other than the

1 number of phone lines per month times the respective amount. The Commission should
2 eliminate the uncertainty and eliminate the future disputes inherent in the complex requirements
3 for proving up each individual CLEC Credit claim. Qwest's proxy amounts do just that.

4 Subsections A, B, C, and D of Section 4 should be deleted and the first and third
5 sentences of Section 4 should be replaced with the following:

6 Within 10 days of the Commission's Decision approving the Settlement
7 Agreement, Qwest shall credit each Eligible CLEC with \$0.96 per line per
8 month for each UNE-P or unbundled loop purchased from Qwest from
9 July 2001 through February 2002.

10 Also, Subsections A, B, C, and D of Section 5 should be deleted and the first, second, and
11 fourth sentences of Section 5 should be replaced with the following:

12 Within 10 days of the Commission's Decision approving the Settlement
13 Agreement, Qwest shall credit each Eligible CLEC with \$2.41 per line per
14 month for each UNE-P line purchased by CLECs through their
15 interconnection agreements with Qwest or Qwest's SGAT from November
16 1, 2000, through June 30, 2001, and \$3.15 per line per month for each
17 UNE-P line purchased by CLECs through their interconnection
18 agreements with Qwest or Qwest's SGAT from July 1, 2001, through
19 February 28, 2002.

20 As an alternative to totally eliminating the proof issues in favor of the proxy amounts, an
21 either/or option could be adopted. It is difficult to imagine that any CLEC would want to try
22 (under Qwest's proposed terms) to prove up to Qwest that the CLEC had additional damages in
23 excess of the proxy numbers for the Section 4 and 5 credits. But if this option is desirable, the
24 proposed Settlement Agreement would need to be modified by maintaining the existing language
25 throughout Section 4 except for adding the following paragraph to the end of Section 4:

26 Alternatively, at the election of the Eligible CLEC, in leu of the

1 credits described above in this section and procedures set forth in
2 paragraphs A, B, C, and D of this section, Qwest shall within ten days
3 issue a credit to the Eligible CLEC equal to \$0.96 per month for each
4 UNE-P line or unbundled loop purchased by the CLEC from Qwest during
5 the time period listed above in this section.

6 Also the existing language in Section 5 would be maintained as is with the following
7 paragraph added to the end of Section 5:

8 Alternatively, at the election of the Eligible CLEC, in lieu of the
9 credits described above in this section and procedures set forth in
10 paragraphs A, B, C, and D of this section, Qwest shall within ten days
11 issue a credit to the Eligible CLEC equal to \$2.41 per month for each
12 UNE-P line purchased by the CLEC through its interconnection agreement
13 with Qwest or Qwest's SGAT from November 1, 2000, through June 30,
14 2001, and \$3.15 per month for each UNE-P line purchased by the CLEC
15 through its interconnection agreement with Qwest or Qwest's SGAT from
16 July 1, 2001, through February 28, 2002.

17 We believe the total adoption of the proxy amounts is the preferable to the either/or
18 approach—it leaves virtually nothing to litigate.

19 **4. QWEST'S POSITION THAT THERE IS NOTHING AVAILABLE FOR OPT-IN**
20 **UNDER SECTION 10 MUST BE REJECTED.**

21 Arizona Dialtone desires to opt in to the non-monetary provisions of the Global Crossing
22 secret agreement, rolling back the date of its UNE-P conversion to April 15, 2000, as Global
23 Crossing was able to do in its secret agreement with Qwest, and as provided for in Section 10 of
24 the proposed Settlement Agreement.

25 In accordance with the provisions of Section 10 of the proposed Settlement Agreement,
26 which only allows for opting into the "non-monetary" terms, Arizona Dialtone assumes that it

1 will be ineligible for the massive rebate of the difference in the tariff rates between wholesale
2 discount and UNE-P pricing for the period when Qwest was wrongfully delaying its changeover
3 to UNE-P. As was the case in the Global Crossing secret agreement, such a rebate of the
4 difference in rates would be a very sizeable amount. Instead, Arizona Dialtone is only asking
5 that the date of its changeover to UNE-P be considered to have occurred on April 15, 2000, (as
6 was done for Global Crossing in its secret agreement) and to use this earlier UNE-P conversion
7 date for the purpose of calculating the several dollars per month proxy amounts for the Section 4
8 and 5 CLEC Credits in the proposed Settlement Agreement.

9 Qwest's witness, Mr. Ziegler, testified clearly that he thought the UNE-P conversion
10 timing of the Global Crossing secret agreement should be available for opt-in under Section 10.
11 Transcript, dated Sept. 16, 2003, pp. 155-159. Mr. Ziegler testified that from a business
12 perspective he believed this term was non-monetary and should be available for opt-in. But we
13 must admit that he did warn that Qwest's lawyers may have a different view of the situation.

14 Sure enough in reaction to this issue, even after Qwest's Assistant Vice-President,
15 Arizona Public Policy, Mr. Ziegler testified that it was available for opt-in, Qwest in essence now
16 claims that there are no "non-monetary" provisions in these secret agreements. At page 24 of its
17 Brief, Qwest argues that if a clause will result in the exchange of money, it is not "non-
18 monetary." This latest interpretation by Qwest makes Section 10 an illusory term. The parties
19 all operate for economic reasons and motives. It is difficult to imagine what provision would be
20 desired by any CLEC that would not result in some positive economic impact for that CLEC.
21 But that is the very standard that Qwest would have the Commission use to say that a term is not
22 available for opt-in. What is left? According to Qwest's legal interpretation—nothing. Qwest's
23 legal interpretation cannot be right. Instead, Qwest's business interpretation should be adopted,
24 as it is the only interpretation that makes sense.

25 Even if one assumes that there is a term somewhere in a secret agreement that Qwest
26 would agree is "non-monetary," according to Qwest there are almost no CLECs that can satisfy

1 everything that Qwest considers to be “related” terms. This contention must be rejected as well.

2 In its Brief at page 24, Qwest even argues that everything specified in the recitals of the
3 secret agreements constitute “related” terms and therefore must be met by the CLEC desiring to
4 opt in under Section 10. In the case of the Global Crossing secret agreement, Qwest points out
5 that Global Crossing had been requesting conversion of its lines to UNE-P and that Qwest was
6 failing to do it. Apparently Global Crossing was complaining and was rightfully upset with
7 Qwest. Even if, as Qwest contends, these provisions found in the recitals are considered
8 “related” terms (which we dispute), it is undisputed in the record that Arizona Dialtone meets
9 these so called “related” terms. Arizona Dialtone repeatedly requested Qwest to convert its
10 wholesale discount payphone lines to UNE-P pricing. And Qwest repeatedly refused and failed
11 to do so. Pre-filed Testimony Thomas W. Bade, pages 9 and 10, filed August 27, 2003;
12 Transcript, September 17, 2003, pages 513-514. Furthermore, even after Qwest entered into a
13 settlement with another CLEC on this issue and committed to convert Arizona Dialtone’s lines to
14 UNE-P, Qwest continued to delay more than another half-year before getting around to
15 implementing its commitment. *Id.* These wrongful delays by Qwest have unjustly cost Arizona
16 Dialtone significant amounts in paying excessive rates to Qwest in the interim, and they have
17 also unjustly squeezed Arizona Dialtone out of almost all of the Section 4 and 5 credits under the
18 proposed Settlement. Whatever requirements Qwest may dredge up from the recitals or anywhere
19 else in the Global Crossing secret agreement, Arizona Dialtone meets them.

20 Arizona Dialtone should be allowed to opt-in to the retroactive timing aspects of the
21 Global Crossing secret agreement so that it can participate in the Section 4 and 5 credits to the
22 same extent as Qwest’s “dangerous CLECs” were allowed by Qwest to do.

23 It is neither just nor in the public interest to interpret a supposedly significant clause of
24 this secret agreements settlement in a way that renders it an illusory term. Qwest’s invitation to
25 do so should be rejected in the strongest terms. Such overreaching arguments by Qwest call for a
26 specific finding by the Commission resolving this issue and holding that Arizona Dialtone can

1 opt into the Global Crossing secret agreement. The proposed Order approving the proposed
2 Settlement Agreement should include the following clause:

3 The Commission finds that for the purposes of the Settlement Agreement and for
4 the purpose of calculating CLEC credits under Sections 4 and 5 of the Settlement
5 Agreement, Arizona Dialtone is deemed to have converted its payphone lines
6 from wholesale discount to UNE-P as of April 15, 2000, and the credits under
7 Sections 4 and 5 of the Settlement Agreement shall be calculated on that basis.

8 **5. THE RELEASE SHOULD PREVENT DOUBLE RECOVERY**

9 Careful review of the release is critical to the parties. Qwest readily admits that the form
10 of release it initially provided to the CLECs was nonsense. The new draft form of release that
11 Qwest included with its Post-Hearing Brief likewise was never previously reviewed by anyone
12 but Qwest. We do not agree that Qwest's new draft form of release is appropriate or that it is in
13 the public interest.

14 Staff, in their post-hearing Brief, points out that the primary purpose behind the release
15 was to "prevent double recovery by the CLECs." Staff's Post Hearing Brief, p. 18, filed October
16 15, 2003. In other words, if a CLEC opts into the Settlement Agreement, it should not be
17 allowed to sue Qwest based upon the very same cause of action and recover damages a second
18 time. This would result in a windfall to the CLEC. Staff further emphasizes that the release
19 should not be overly broad. We agree with Staff: the release should be narrowly tailored to
20 include only the claims that Qwest is resolving, thereby preventing double recovery by the
21 CLECs. The claims that Qwest is resolving are only the claims that form the basis of the
22 Sections 3, 4 and 5 credits. Qwest repeatedly contends that any other claim mentioned by a
23 CLEC belongs in another proceeding. To assure that these other claims that are not being
24 resolved here can survive in another proceeding, the release must be limited to the Section 3, 4,
25 and 5 claims.

26 At the same time, Qwest should not be allowed to squeeze a CLEC by withholding

1 payment of any credit that is not in dispute while at the same time disputing the amount of
2 another credit. For example, a number of CLECs do not dispute Qwest's numbers for the
3 Section 3 Discount Credits. These are, for the most part, a simple tally of the CLEC's phone
4 bills. But it is difficult to imagine a CLEC slogging through the documentation and proof issues
5 in Sections 4 and 5 without numerous disputes on the other credits. Yet if only a single release is
6 used for all credits, Qwest will be allowed to, in effect, hold the Section 3 credits hostage until all
7 disputes over the Section 4 and 5 credits are all resolved.

8 This is supposed to be a global settlement, not the beginning of hardball negotiation
9 tactics. To eliminate the incentive to hold up undisputed credits while at the same time being
10 unreasonable on other credits, the release should be separated into three different forms that the
11 CLEC can adopt, at its option, to release only the claims pertaining to the particular CLEC credit
12 being accepted.

13 Additionally, the release given by a CLEC to Qwest in order to obtain credits from Qwest
14 under the proposed Settlement Agreement can only be properly interpreted in the context of this
15 settlement. Therefore the integration clause that Qwest has proposed which purports to divorce
16 the release document from the context of this global settlement is inappropriate, and is not in the
17 public interest.

18 The release for the Section 3 credit should be limited to releasing all claims based on
19 Qwest having offered 10% discounts to other CLECs on 47 U.S.C. Section 251(b) and (c)
20 services only, and only for the time period of January 1, 2001 through June 30, 2002.

21 The release for the Section 4 credit should be limited to releasing all claims based on
22 Qwest having contracted to pay up to \$2.00 per month per line to other CLECs for Qwest having
23 terminated intraLATA toll during the time period of July 1, 2001 through February 28, 2002.

24 The release for the Section 5 credit should be limited to releasing all claims based on
25 Qwest having contracted to pay other CLECs up to \$13 and \$16 per line per month for Qwest
26 having supplied inaccurate daily usage information during the time period of November 1, 2000

1 through February 28, 2002.

2 The last sentence in the first paragraph of Sections 3, 4, and 5 should be revised to
3 incorporate this narrower release language. Additionally, we have attached to this Brief as
4 Exhibits 3 through 5 a separate form of release for each of the Section 3, 4, and 5 CLEC credits.
5 Also attached as Exhibit 2 is a comparison copy between Qwest's Release and the Section 3
6 Release that we believe is appropriate.

7 **6. REMOVE THE CREDIT CEILINGS.**

8 The maximum limits on the CLEC Credits in the proposed Settlement Agreement should
9 be removed. At page 15 of its Initial Post-Hearing Brief, Qwest again attempts to reassure
10 everyone that the ceilings that it calculated for the maximum CLEC credit amounts are of no
11 concern. Under the circumstances, because Qwest is the only party with any data on this issue
12 and Qwest has been unwilling to share this data with anyone, it is Qwest that should bear the risk
13 that its estimates are faulty. Certainly the CLECs, that were directly harmed by Qwest's
14 wrongful conduct, should not be the ones at risk of having their Credits reduced because Qwest
15 may be unable to accurately estimate the financial impact of the proposed Settlement Agreement.

16 There is an easy and very appropriate solution to this inequity: Remove the ceiling limits
17 in the proposed Settlement Agreement and allow the risk to fall where it belongs—on
18 Qwest—the only party with the information to confirm or deny its assertions.

19 The following modifications to the proposed Settlement Agreement should be included in
20 the proposed order to eliminate Qwest's caps on the CLEC credits:

21 The first sentence of the final paragraph in Section 3 at page 7 which reads "The amount
22 of the aggregate Discount Credit shall neither exceed \$8,910,000.00 nor be less than
23 \$8,100,000.00." should be revised to read: "The amount of the aggregate Discount Credit shall
24 not be less than \$8,100,000.00." Also, the final sentence of this same paragraph at page 7 of the
25 proposed Settlement Agreement describing the process for pro-rata reduction of the credits
26 should be deleted.

1 For the Section 4 Access Line Credits, the similar paragraph at the top of page 8 of the
2 proposed Settlement Agreement should be similarly modified. And for the Section 5 UNE-P
3 Credits, the similar paragraph at the bottom of page 10 should also be modified.

4 **7. THE MINIMUM CREDIT FLOORS SHOULD BE MAINTAINED BUT**
5 **VERIFIED.**

6 Unlike the maximum CLEC Credit amounts, the minimum amounts specified in proposed
7 Settlement Agreement serve a public purpose. But the Commission also owes a duty to the
8 public and to the CLECs to check these minimum amounts. The Commission should look at
9 Qwest's numbers, both collectively and on an individual CLEC by CLEC basis to determine if
10 they are reasonable. MTI points out in their initial Post Hearing Brief that only a minor portion
11 (perhaps less than one quarter) of the CLEC Credits are included in Qwest's proxy numbers for
12 the parties that are participating in this proceeding. Qwest represents in the proposed Settlement
13 Agreement that its proxy amounts total \$9,200,000 for all of the CLEC Credits combined. If this
14 representation by Qwest is a fiction, and the true total of the CLEC Credits is only a fraction of
15 \$9,200,000, the Commission and the CLECs should know this before evaluating the
16 reasonableness of the Settlement, and we should know why there is such a large apparent
17 discrepancy between Qwest's real estimates of CLEC credits and the amounts written into the
18 proposed Settlement Agreement.

19 It appears as though Qwest is only going to pay the CLECs about 25% of the amounts
20 that appear in the proposed Settlement Agreement. Such a skewing of the Settlement with
21 fictional numbers in the CLEC credit sections and wrapping the majority of the CLEC Credit
22 amounts around through Section 6 into Qwest's spending on its own infrastructure for its own
23 benefit is not in the public interest. If Qwest truly plans to spend half or three quarters (or any
24 major fraction of what are purported to be the CLEC credits) on its infrastructure, that number
25 (whatever it may be) should be placed in Section 2 instead of being concealed and mis-labeled in
26 Sections 3, 4 and 5. Then, with the numbers placed in the proper perspective, the Settlement can

1 be weighed and reviewed accordingly.

2 These numbers raise questions that should be answered before determining whether this
3 settlement is in the public interest. Are the majority of Qwest's CLEC Credits going to
4 companies that have long since been out of business? Is Qwest including amounts for Eschelon
5 and McLeod, which the proposed Settlement Agreement specifies are not eligible for the credits,
6 just to make the credits appear to be more than they truly are? Qwest is the only party with the
7 backup for these numbers and Qwest should make them known to the Commission and known to
8 the public.

9 **8. THE TIME PERIOD FOR THE CREDITS SHOULD BE EXTENDED TO THE**
10 **FULL FIVE-YEAR DURATION OF THE SECRET AGREEMENTS**

11 In addition to the possibility that Qwest has inflated its representation of the CLEC credit
12 amounts by a factor of two or three times in the proposed Settlement Agreement, Qwest has also
13 inappropriately shortened the time periods for the CLEC credits.

14 Qwest should not be allowed to shorten the time period for the CLEC Credits because it
15 paid its "dangerous CLECs" to terminate their secret agreements early. But that is exactly what
16 Qwest has done in the proposed Settlement Agreement. Instead, the credit period should be
17 continued to the full intended term of the secret agreements, five years for the Eschelon secret
18 agreements and three and one-half years for McLeod's secret agreements. Qwest paid its
19 "dangerous CLECs" to terminate the secret agreements early, and that payment by Qwest should
20 not be allowed to limit Qwest's liability to the other CLECs that were not allowed to participate
21 in the secret agreements and not allowed to participate in the early termination payments.

22 Extending the time for the CLEC credits to five years instead of the approximately one
23 and one-half year period listed in the proposed Settlement Agreement has several benefits. This
24 change will allow the CLECs to participate in Qwest's unlawful and anti-competitive discounts
25 at a level commensurate with the CLEC's participation in the market after Qwest terminated its
26 discriminatory conduct, instead of at the level experienced by the CLEC while Qwest's anti-

1 competitive conduct was ongoing. It also allows the CLECs to participate in the full economic
2 benefit of Qwest's secret agreements including the early termination payments that Qwest made
3 to its "dangerous CLECs." And perhaps this lengthening of the time periods will raise Qwest's
4 actual CLEC credit payment amounts to a level at least approaching the minimum amounts that
5 Qwest represents it will pay to the CLECs under the proposed Settlement Agreement.

6 The duration of the CLEC credit periods should be extended to the full five year term of
7 the Eschelon secret agreements. This change will allow the CLECs the equivalent economic
8 benefit that was unlawfully given to Qwest's "dangerous CLECs."

9 **9. MAKE A SPECIFIC FINDING THAT THE CLECs ARE ELIGIBLE.**

10 Throughout this process, Qwest has been unwilling to commit to even the most basic
11 issues, and instead Qwest continually reserves its rights to challenge anything it wants to later,
12 after the settlement is approved. This position by Qwest does not promote certainty and it is not
13 in the public interest. To resolve these uncertainties left by Qwest, the proposed order should
14 include specific findings by the Commission wherever possible.

15 For example, it appears to be undisputed that Arizona Dialtone is an "Eligible CLEC" as
16 that term is used in the proposed Settlement Agreement. To remove any issue on this point, the
17 proposed order must include a specific finding to this effect regarding Arizona Dialtone and the
18 other CLECs that have been participating in this matter.

19 If Qwest is planning on challenging the eligibility status of a CLEC, the CLEC needs to
20 know about it now to properly evaluate the proposed Settlement Agreement, not learn of Qwest's
21 objections later after the settlement is done and the language finalized. The following specific
22 finding should be in the proposed order:

23 It is undisputed and the Commission hereby finds that "Eligible CLECs"
24 for all purposes and all relevant time periods under the Settlement Agreement
25 include, but are not limited to: Arizona Dialtone, Inc.; AT&T Communications of
26 the Mountain States, Inc.; TCG Phoenix; Time Warner Telecom of Arizona, LLC,

1 and Mountain Telecommunications Inc.

2 **10. WHERE THE CLEC CREDITS ARE UNDISPUTED, THE COMMISSION**
3 **SHOULD ORDER THEM.**

4 The proposed order should make specific findings as to the amount of CLEC Credits to
5 be paid by Qwest in accordance with Qwest's proxy numbers for any CLEC that requests such a
6 finding, and it should order all such undisputed amounts to be paid promptly.

7 For example, Qwest has informed Arizona Dialtone that it is eligible for a Section 3
8 Discount Credit of \$319,004. Arizona Dialtone does not dispute this amount, and it should
9 therefore be included as a specific finding in the Commission's order. The following specific
10 finding should be included in the proposed order:

11 The following CLEC credits are undisputed. Within 10 days of the
12 issuance of this order, and upon receipt by Qwest of a duly executed release from
13 the CLEC as provided in the Settlement Agreement for the particular section
14 specified, Qwest shall issue the following credits to the CLECs as listed below:

15 1) \$319,004 for Section 3 Credits to Arizona Dialtone, Inc.

16 2) \$ _____ for Section __ Credits to _____.

17 3) \$ _____ for Section __ Credits to _____.

18 **11. THE SETTLEMENT SHOULD PROVIDE FOR CASH PAYMENTS INSTEAD**
19 **OF CREDITS TO CLECs NO LONGER IN BUSINESS.**

20 The CLEC credits should not be limited to "credits" as currently specified in the proposed
21 Settlement. Instead, the "credits" should be made as cash payments if the CLEC has insufficient
22 ongoing business to justify the "credit" method of payment. Also, Qwest should not be allowed
23 to apply the credits to an outstanding bill that is the subject of a good faith billing dispute by the
24 CLEC.

25 Qwest does not appear to oppose the payment of cash instead of credits when the CLEC
26 is no longer doing significant business with Qwest. Mr. Ziegler confirmed this in his testimony
at pages 95 and 96 of the September 16, 2003 transcript. To clarify this it should be written in the

1 Agreement and defined with certainty so there is no dispute.

2 If the amount of CLEC business is insufficient to consume the credit within a three month
3 period beginning on the approval of the settlement, then the remainder should be paid in cash.

4 Also, no good faith billing disputes should be resolved by Qwest paying itself with a CLEC
5 credit.

6 The following language should be added to the written settlement:

7 The CLEC credits shall be paid in full within three months of the
8 Commission's approval of this Settlement Agreement. Any CLEC
9 credits that remain after this three month period shall be paid by
10 Qwest in cash to the CLEC. Qwest shall not apply any CLEC
11 credits to an outstanding bill that is the subject of a billing dispute
12 by the CLEC.

13 **12. INCLUDE PRE-JUDGMENT AND POST-JUDGMENT INTEREST.**

14 Qwest should be required to pay interest on the CLEC Credits until they are paid in full.
15 For years Qwest wrongfully deprived CLECs of compensation, and unlawfully charged them
16 more for services than Qwest was charging its "dangerous CLECs." The amount of the credits are
17 reasonably ascertainable and known. Qwest has already calculated them for any CLEC that
18 requested its number based on the proxy amounts Qwest paid to its "dangerous CLECs." Both pre
19 and post judgment interest are called for in this case. This interest compensates the CLECs for
20 the years of delays caused by Qwest's unlawful actions, and it provides at least some incentive for
21 Qwest to act quickly and reasonably in settling up and paying the credits.

22 The Following clause should be added to the proposed Settlement Agreement:

23 In addition to the CLEC credits specified in Sections 3, 4, and 5 of
24 this Agreement, Qwest shall also credit each eligible CLEC with pre
25 and post-settlement interest at the legal rate of 10% per annum
26 commencing on the date for which the credit is granted and running

1 through the date on which the full credit is issued to the CLEC or
2 paid in cash by Qwest.

3 **13. DISPUTE RESOLUTION**

4 To remove any potential for game playing and bouncing back and forth from one
5 jurisdiction to another, there needs to be a provision stating that Qwest agrees and consents to the
6 jurisdiction of the Arizona Corporation Commission as the proper forum for resolution of any
7 disputes relating to this Settlement.

8 The following clause should be added to the proposed Settlement Agreement:

9 The parties to this Agreement hereby consent and agree to the
10 Arizona Corporation Commission as a proper forum with jurisdiction
11 and authority to resolve all disputes relating to this Agreement.

12 **14. REJECT QWEST'S CONTENTION THAT IT MADE A SIGNIFICANT**
13 **COMPROMISE TO ALLOW SMALLER CLECs REDRESS FOR QWEST'S**
14 **DISCRIMINATORY DISCOUNTS OR THAT THE SETTLEMENT IS NEEDED**
15 **TO ASSURE QWEST'S COMPLIANCE.**

16 Qwest repeatedly argues that one of its major "compromises" in the proposed Settlement
17 Agreement is that it is not requiring the CLECs to meet all of the "related" volume purchase and
18 term requirements that were written into the secret agreements or found in some other "related"
19 secret agreements as a condition of receiving the Section 3, 4 and 5 credits. This contention is
20 nonsense. Qwest has not demonstrated any logical relationship between the volume and term
21 clauses and its discriminatory discounts hidden in the secret agreements. It would be very
22 convenient indeed if the law allowed Qwest to discriminate against any class of wholesale
23 competitors that it wanted to, merely by writing whatever kind of discriminatory terms it desires
24 in its secret contracts.

25 Qwest can no more justify its wrongful discriminatory contract by pointing to its self-
26 fabricated volume and term clauses than it could by drafting in a clause stating the discounts are
only available to the CLECs that have names start with the letters "E" or "M". Certainly, with

1 regard to the lengthy term requirements in the Eschelon and McLeod secret agreements, they must
2 not have any significant value for Qwest, because Qwest paid huge amounts to terminate these
3 agreements early. Qwest's argument that its discounts only lawfully apply to its largest CLECs,
4 and therefore all the smaller CLECs must just suffer the disadvantages, is equally nonsense. The
5 Minnesota Commission in its Orders regarding the secret agreements had no problem looking
6 through this nonsensical assertion by Qwest. Qwest's argument that it should be able to
7 discriminate against smaller CLECs by merely dreaming up a minimum purchase requirement and
8 writing the number into a secret agreement should be rejected in the strongest of terms, just as it
9 was in the Minnesota proceedings.

10 Equally questionable is Qwest's argument at page 6 of its Initial Post-Hearing Brief that
11 the Commission should adopt the Settlement Agreement as written in order to assure Qwest's
12 prompt compliance. Qwest's logic in this statement escapes us. Apparently Qwest is contending
13 that it is not in compliance and that the Commission should accede to the proposed Settlement
14 Agreement in order to bring Qwest into compliance or to assure that it stays in compliance.
15 Qwest's logic is difficult to understand. We would like to know which legal requirement Qwest
16 is currently failing to comply with. Is it the filing requirements under Section 252(e)? Is it the
17 requirement to provide non-discriminatory services and pricing? If there is something contained
18 in this proposed Settlement Agreement that is needed to for Qwest to comply, we want to know
19 what it is, and the Commission should know as well.

20 Qwest's arguments that it is doing some kind of major compromise by allowing the
21 smaller CLECs to participate in the credits is nonsense. And the elements relating to Qwest
22 allowing monitoring of its ongoing compliance with the law should be viewed as a burden
23 necessitated by Qwest's unlawful conduct, not as a positive reason for supporting the proposed
24 Settlement Agreement.

1 **15. CONCLUSION**

2 With these proposed clarifications and modifications, we believe the Settlement
3 Agreement would be fair and reasonable and in the public interest. Without these changes, the
4 Settlement Agreement as drafted by Qwest should be rejected because it would not be in the
5 public interest for the reasons set forth above.

6 RESPECTFULLY SUBMITTED this 29th day of October, 2003.

7 MORRILL & ARONSON, P.L.C.

8
9 By 
10 Martin A. Aronson
11 William D. Cleaveland
12 One East Camelback, Suite 340
13 Phoenix, AZ 85012
14 Attorneys for Arizona Dialtone, Inc.
15
16
17
18
19
20
21
22
23
24
25
26

1 **CERTIFICATE OF SERVICE**

2 I certify that the original and 17 copies of the foregoing were hand-delivered this 29th day
3 of October, 2003, to:

4 Arizona Corporation Commission
5 Docket Control - Utilities Division
6 1200 West Washington Street
7 Phoenix, AZ 85007

8 and that a copy of the foregoing was mailed the ____ day of October, 2003, to the following:

9 QWEST Corporation
10 1801 California Street, #5100
11 Denver, CO 80202

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

12 Maureen Arnold
13 U S WEST COMMUNICATIONS, INC.
14 3033 N. Third St., Room 1010
15 Phoenix, AZ 85012

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

16 Michael M. Grant
17 GALLAGHER AND KENNEDY
18 2575 E. Camelback Rd.
19 Phoenix, AZ 85016-9225

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

20 Timothy Berg
21 FENNEMORE CRAIG
22 3003 N. Central Ave., Ste. 2600
23 Phoenix, AZ 85012-2913

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

24 Mark Dioguardi
25 TIFFANY AND BOSCO, PA
26 500 Dial Tower
1850 N. Central Ave.
Phoenix, AZ 85004

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

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

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

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

1	Joyce Hundley UNITED STATES DEPT. OF JUSTICE	Mark DiNunzio COX ARIZONA TELCOM, LLC 20401 N. 29 th Avenue, Suite 100 Phoenix, AZ 85027
2	Antitrust Division 1401 H St., NW, Suite 8000	
3	Washington, DC 20530	
4	Joan Burke OSBORN MALEDON	Jon Loehman Managing Director-Regulatory SBC TELECOM, INC. 5800 Northwest Parkway Suite 135, Room 1.S.40 San Antonio, TX 78249
5	2929 N. Central Ave., 21 st Floor P. O. Box 36379	
6	Phoenix, AZ 85067-6379	
7	Scott S. Wakefield, Chief Counsel RUCO	Andrea P. Harris Senior Manager, Regulatory ALLEGIANCE TELECOM, INC. P. O. Box 2610 Dublin, CA 94568
8	1110 W. Washington, Ste. 220 Phoenix, AZ 85007	
9	Gregory Hoffman	
10	AT&T 795 Folsom St., Rm. 2159	Karen Clausen ECHELON TELECOM, INC. 730 N. 2 nd Ave. S, Ste. 1200 Minneapolis, MN 55402
11	San Francisco, CA 94107-1243	
12	Daniel Waggoner DAVIS WRIGHT TREMAINE	Todd C. Wiley GALLAGHER & KENNEDY 2575 E. Camelback Rd. Phoenix, AZ 85016-9225
13	2600 Century Square 1501 Fourth Avenue	
14	Seattle, WA 98101-1688	
15	Douglas Hsiao Jim Scheltema	Harry L. Pliskin COVAD COMMUNICATIONS CO. 7901 Lowry Blvd. Denver, CO 80230
16	BLUMENFELD & COHEN 1655 Massachusetts Ave., NW, Ste. 300	
17	Washington, DC 20036	
18	Diane Bacon Legislative Director	Brian Thomas TIME WARNER TELECOM, INC. 520 S.W. 6 th Avenue, Ste. 300 Portland, OR 97204
19	COMMUNICATIONS WORKERS OF AMERICA 5818 N. 7 th St., Ste. 206	
20	Phoenix, AZ 85014-5811	
21	Mark N. Rogers EXCELL AGENT SERVICES LLC	John Poston ACTS 6733 E. Dale Lane Cave Creek, AZ 85331-6561
22	P.O. Box 52092 Phoenix, AZ 85072-2092	
23	Mark P. Trincherro DAVIS WRIGHT TREMAINE LLP	Jacqueline Manogian MOUNTAIN TELECOMMUNICATIONS, INC. 1430 W. Broadway Rd., Ste. A200 Tempe, AZ 85282
24	1300 SW Fifth Ave., Ste. 2300 Portland, OR 97201	
25		
26		

1 Kimberly M. Kirby
DAVIS DIXON KIRBY LLP
2 19200 Von Karman Ave., Ste. 600
Irvine, CA 92612

3
4 Cynthia A. Mitchell
1470 Walnut St., Ste. 200
Boulder, CO 80302

5
6 Peter S. Spivack
HOGAN & HARTSON, LLP
555 13th St., NW
7 Washington, DC 20004-1109

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

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

13 Mitchell F. Brecher
GREENBERG TRAURIG, LLP
14 800 Connecticut Ave., NW
Washington, DC 20006

15 Richard S. Wolters
16 MICHEL SINGER NELSON
AT&T
17 1875 Lawrence St., Room 1575
Denver, CO 80202-1847

18 Mary E. Steele
19 DAVIS WRIGHT TREMAINE LLP
2600 Century Square
20 1501 Fourth Avenue
Seattle, WA 98101-1688

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

24 Nigel Bates
ELECTRIC LIGHTWAVE, INC.
25 4400 NE 77th Ave.
Vancouver, WA 98662

26

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

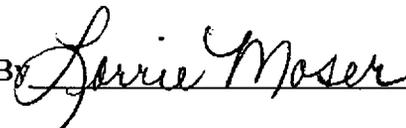
By 

EXHIBIT 1

**Summary of Arizona Dialtone, Inc.'s Recommended
Modifications to the
Proposed Settlement Agreement**

A. Adopt Qwest's Proxy Amounts.

Subsections A, B, C, and D of Section 4 should be deleted and the first and third sentences of Section 4 should be replaced with the following:

Within 10 days of the Commission's Decision approving the Settlement Agreement, Qwest shall credit each Eligible CLEC with \$0.96 per line per month for each UNE-P or unbundled loop purchased from Qwest from July 2001 through February 2002.

Subsections A, B, C, and D of Section 5 should be deleted and the first, second, and fourth sentences of Section 5 should be replaced with the following:

Within 10 days of the Commission's Decision approving the Settlement Agreement, Qwest shall credit each Eligible CLEC with \$2.41 per line per month for each UNE-P line purchased by CLECs through their interconnection agreements with Qwest or Qwest's SGAT from November 1, 2000, through June 30, 2001, and \$3.15 per line per month for each UNE-P line purchased by CLECs through their interconnection agreements with Qwest or Qwest's SGAT from July 1, 2001, through February 28, 2002.

As an alternative to totally adopting the proxy amounts, an either/or option could be adopted as follows: The proposed Settlement Agreement would need to be modified by maintaining the existing language throughout Section 4 except for adding the following

paragraph to the end of Section 4:

Alternatively, at the election of the Eligible CLEC, in lieu of the credits described above in this section and procedures set forth in paragraphs A, B, C, and D of this section, Qwest shall within ten days issue a credit to the Eligible CLEC equal to \$0.96 per month for each UNE-P line or unbundled loop purchased by the CLEC from Qwest during the time period listed above in this section.

Also the existing language in Section 5 would be maintained as is with the following paragraph added to the end of Section 5:

Alternatively, at the election of the Eligible CLEC, in lieu of the credits described above in this section and procedures set forth in paragraphs A, B, C, and D of this section, Qwest shall within ten days issue a credit to the Eligible CLEC equal to \$2.41 per month for each UNE-P line purchased by the CLEC through its interconnection agreement with Qwest or Qwest's SGAT from November 1, 2000, through June 30, 2001, and \$3.15 per month for each UNE-P line purchased by the CLEC through its interconnection agreement with Qwest or Qwest's SGAT from July 1, 2001, through February 28, 2002.

B. Allow Arizona Dialtone to Opt-In to the Global Crossing Secret Agreement.

The proposed Order approving the Settlement should include the following clause:

The Commission finds that for the purposes of the Settlement Agreement and for the purpose of calculating CLEC credits under Sections

4 and 5 of the Settlement Agreement, Arizona Dialtone is deemed to have converted its payphone lines from wholesale discount to UNE-P as of April 15, 2000, and the credits under Sections 4 and 5 of the Settlement Agreement shall be calculated on that basis.

C. Fix the Overly Broad Release.

The release for the Section 3 credit should be limited to releasing all claims based on Qwest having offered 10% discounts to other CLECs on 47 U.S.C. Section 251(b) and (c) services only, and only for the time period of January 1, 2001 through June 30, 2002.

The release for the Section 4 credit should be limited to releasing all claims based on Qwest having contracted to pay up to \$2.00 per month per line to other CLECs for Qwest having terminated intraLATA toll during the time period of July 1, 2001 through February 28, 2002.

The release for the Section 5 credit should be limited to releasing all claims based on Qwest having contracted to pay other CLECs up to \$13 and \$16 per line per month for Qwest having supplied inaccurate daily usage information during the time period of November 1, 2000 through February 28, 2002.

The last sentence of the first paragraph of Sections 3, 4, and 5 should be revised to incorporate this narrower release language. Additionally, we have attached to this Brief as Exhibits 3 through 5 a separate form of release for each of the Section 3, 4, and 5 CLEC credits. Also attached as Exhibit 2 is a comparison copy between Qwest's Release and the Section 3 Release that we propose.

D. Remove the Credit Ceilings.

The first sentence of the final paragraph in Section 3 at page 7 which reads “The amount of the aggregate Discount Credit shall neither exceed \$8,910,000.00 nor be less than \$8,100,000.00.” should be revised to read: “The amount of the aggregate Discount Credit shall not be less than \$8,100,000.00.” Also, the final sentence of this same paragraph at page 7 of the proposed Settlement Agreement describing the process for pro-rata reduction of the credits should be deleted.

For the Section 4 Access Line Credits, the similar paragraph at the top of page 8 of the proposed Settlement Agreement should be similarly modified. And for the Section 5 UNE-P Credits, the similar paragraph at the bottom of page 10 should also be modified.

E. Verify the Reasonableness of Qwest’s Secret Numbers Behind the Minimum CLEC Credits.

Qwest’s secret data raises serious questions about the validity of the projected CLEC Credit amounts reflected in the proposed Settlement Agreement.

F. Extend the CLEC Credits to the full Duration of the Secret Agreements.

The duration of the CLEC credit periods should be extended to the full five year term of the Eschelon secret agreements.

G. Make a Finding that the CLECs are “Eligible.”

The following specific finding should be in the proposed order:

It is undisputed and the Commission hereby finds that “Eligible CLECs” for all purposes and all relevant time periods under the Settlement Agreement include, but are not limited to: Arizona Dialtone, Inc.; AT&T

Communications of the Mountain States, Inc.; TCG Phoenix; Time Warner Telecom of Arizona, LLC, and Mountain Telecommunications Inc.

H. Order Qwest to Promptly Pay Undisputed Credits.

Include the following specific finding in the proposed order:

The following CLEC credits are undisputed. Within 10 days of the issuance of this order, and upon receipt by Qwest of a duly executed release from the CLEC as provided in the Settlement Agreement for the particular section specified, Qwest shall issue the following credits to the CLECs as listed below:

- 1) \$319,004 for Section 3 Credits to Arizona Dialtone, Inc.
- 2) \$ _____ for Section __ Credits to _____.
- 3) \$ _____ for Section __ Credits to _____.

I. Include Cash Payments Where Credits are Inappropriate.

The following language should be added to the written settlement:

The CLEC credits shall be paid in full within three months of the Commission's approval of this Settlement Agreement. Any CLEC credits that remain after this three month period shall be paid by Qwest in cash to the CLEC. Qwest shall not apply any CLEC credits to an outstanding bill that is the subject of a billing dispute by the CLEC.

J. Include Pre and Post Judgment Interest.

The Following clause should be added to the proposed Settlement Agreement:

In addition to the CLEC credits specified in Sections 3, 4, and 5 of this Agreement, Qwest shall also credit each eligible CLEC with pre and post-settlement interest at the legal rate of 10% per annum commencing on the date for which the credit is granted and running through the date on which the full credit is issued to the CLEC or paid in cash by Qwest.

K. Include Qwest's Consents to the Jurisdiction of the Commission.

The following clause should be added to the proposed Settlement Agreement:

The parties to this Agreement hereby consent and agree to the Arizona Corporation Commission as a proper forum with jurisdiction and authority to resolve all disputes relating to this Agreement.

EXHIBIT 2

RELEASE OF ALL CERTAIN CLAIMS

Section 3 Release

KNOW ALL PERSON BY THESE PRESENTS:

WHEREAS, on or about DATE The Arizona Corporation Commission ("Commission") approved a settlement agreement ("Agreement") between Qwest Corporation ("Qwest") and the Arizona Corporation Commission Staff ("Staff") with respect to dockets then pending before the Arizona Corporation Commission ("Commission"), specifically Docket No. RT-00000F-02-0271 (the "252(e) Unified Agreements"; Docket No. T-00000A-97-0238 (the "271 Subdocket") and T-01051B-02-0871. These dockets shall be collectively referred to in this Agreement as the "Litigation."

WHEREAS, as part of the Agreement, certain competitive local exchange carriers certificated by the Commission to provide local exchange services in Arizona, who purchased interconnection services or unbundled network elements under Section 251(b) or (c) of the Act from Qwest may be entitled to receive a Discount Credit, Access Line Credit or UNE-P Credit under the terms of this Agreement.

WHEREAS, NAME OF CLEC, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents, desires to receive the benefits contained therein, including execution of this Release of All Certain Claims, as referenced in Paragraph(s) 3, 4 and 5 of the Agreement.

1. 1. In consideration for the payment of Discount Credits, Access Line Credits and/or UNE-P Credits under the Agreement, the receipt and sufficiency of which are hereby acknowledged, NAME OF CLEC, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents, releases any and all claims, causes of action, rights, liabilities, complaints before or to a regulatory or governmental body, suits, requests for remedies or damages, and obligations of every nature, kind or description whatsoever regardless of what legal theory based, and regardless of whether grounded in common law, statute, administrative rule or regulation, tariff, contract, tort, equity or otherwise, including, but not limited to, claims or causes of action for fraud, misrepresentation, discrimination, violation of any law of the State of Arizona, violation of any tariff, breach of contract, the violation of federal statutes, rules or regulations, which NAME OF CLEC had, has, may hereafter have, or which any other person had, has, or may hereafter have through NAME OF CLEC based in whole or in part upon any agreement, act or omission of Qwest that is the subject of the Litigation including but not limited to Qwest's failure to file agreements with the Commission for review pursuant to Section 252 of the Telecommunications Act of 1996 on Qwest having offered 10% discounts on 47 U.S.C. Section 251(b) and (c) service to other competitive local exchange carriers. This Release is further limited to only claims arising from the actions of Qwest that are the subject of the Litigation and that relate to (+occurred during the time period of January 1, 2001 through June 30, 2002, and only claims

~~relating to 47 U.S.C. Section 251(b) and (c) services purchased by NAME OF CLEC from Qwest in the State of Arizona pursuant to Sections 251(b) or (c) of the Telecommunications Act of 1996, and (b) and all other intrastate telecommunications services purchased by NAME OF CLEC from Qwest, including but not limited to switched access and private line services, in the State of Arizona.~~

~~2. This Release of All Claims reflects a fully binding and complete settlement between Qwest and NAME of CLEC, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents, pertaining to the Litigation referenced above.~~

~~3. This Release of All Certain Claims shall be construed, interpreted, and enforced in accordance with the laws of the State of Arizona.~~

~~4. This Release of All Claims represents Qwest's and NAME OF CLEC's, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents, mutual desire to compromise and settle all disputed claims at issue in the Litigation in a manner consistent with the public interest and based upon the pre-filed testimony and exhibits and the evidentiary record developed in the Litigation. This Release of All Claims represents a compromise of the positions of Qwest's and NAME OF CLEC's, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents. Acceptance of this Release of All Claims is without prejudice to any position taken by any party in the Litigation and none of the provisions of the Agreement or this Release of All Claims may be referred to, cited or relied upon by any other party in any fashion as precedent or otherwise in any proceeding before this Commission or any other regulatory agency or before any court of law for any purpose except in furtherance of the purposes and results of this Release of All Claims.~~

~~6. Section 3 Release (continued)~~

~~3. The provisions of this Release of All Certain Claims may not be waived, altered, or amended, in whole or in part, without the written consent of Qwest and NAME OF CLEC.~~

~~7. The terms of this Release of All Claims are contractual and not mere recitals, and no representations have been made which are not contained herein.~~

~~8. This Release of All Claims constitutes the full and complete understanding of Qwest and NAME OF CLEC and supersedes any prior understandings or agreements, whether oral or in writing.~~

~~9. 4. In the event that any term, covenant, or provision of this Release of All Claims shall~~

be held by a court of competent jurisdiction or any regulatory or governmental body including the Commission to be invalid or against public policy, the remaining provisions of this Release of All Claims shall remain in full force and effect.

105. — Qwest and **NAME OF CLEC** hereby represent to each other that they have reviewed

and understand this Release of ~~All~~Certain Claims, and that neither Qwest nor **NAME OF CLEC** shall deny the validity of this Release of ~~All~~Certain Claims on the grounds that they did not understand the nature and consequences of this Release of ~~All~~Certain Claims or did not have the advice of counsel.

116. _____NAME OF CLEC represents that it has the authority to act on behalf of its corporate parents, affiliates, subsidiaries, and agents to release all claims stated herein and to execute this Release of ~~All~~Certain Claims.

127. _____NAME OF CLEC and its corporate parents, affiliates, subsidiaries, and agents represent that they have not transferred the right to enforce any claims stated herein to any other person or entity.

138. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

DATED this _____ day of _____, _____.

NAME OF CLEC, on its OWN behalf and on behalf of its corporate parents, affiliates, subsidiaries and agents

BY: _____

AND
QWEST CORPORATION

BY: _____

EXHIBIT 3

RELEASE OF CERTAIN CLAIMS

Section 3 Release

KNOW ALL PERSON BY THESE PRESENTS:

WHEREAS, on or about **DATE** The Arizona Corporation Commission ("Commission") approved a settlement agreement ("Agreement") between Qwest Corporation ("Qwest") and the Arizona Corporation Commission Staff ("Staff") with respect to dockets then pending before the Arizona Corporation Commission ("Commission"), specifically Docket No. RT-00000F-02-0271 (the "252(e) Unified Agreements; Docket No. T-00000A-97-0238 (the "271 Subdocket") and T-01051B-02-0871. These dockets shall be collectively referred to in this Agreement as the "Litigation."

WHEREAS, as part of the Agreement, certain competitive local exchange carriers certificated by the Commission to provide local exchange services in Arizona, who purchased interconnection services or unbundled network elements under Section 251(b) or (c) of the Act from Qwest may be entitled to receive a Discount Credit under the terms of the Agreement.

WHEREAS, **NAME OF CLEC**, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents, desires to receive the benefits contained therein, including execution of this Release of Certain Claims, as referenced in Paragraph 3 of the Agreement.

1. In consideration for the payment of Discount Credits under the Agreement, the sufficiency of which are hereby acknowledged, **NAME OF CLEC**, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents, releases any and all claims, causes of action, rights, liabilities, complaints before or to a regulatory or governmental body, suits, requests for remedies or damages, and obligations of every nature, kind or description whatsoever regardless of what legal theory based, and regardless of whether grounded in common law, statute, administrative rule or regulation, tariff, contract, tort, equity or otherwise, including, but not limited to, claims or causes of action for fraud, misrepresentation, discrimination, violation of any law of the State of Arizona, violation of any tariff, breach of contract, the violation of federal statutes, rules or regulations, which **NAME OF CLEC** had, has, or which any other person had, or has through **NAME OF CLEC** based on Qwest having offered 10% discounts on 47 U.S.C. Section 251(b) and (c) service to other competitive local exchange carriers. This Release is further limited to only claims arising from the actions of Qwest that occurred during the time period of January 1, 2001 through June 30, 2002, and only claims relating to 47 U.S.C. Section 251(b) and (c) services purchased by **NAME OF CLEC** from Qwest in the State of Arizona.

2. This Release of Certain Claims shall be construed, interpreted, and enforced in accordance with the laws of the State of Arizona.

Section 3 Release (continued)

3. The provisions of this Release of Certain Claims may not be waived, altered, or amended, in whole or in part, without the written consent of Qwest and **NAME OF CLEC**.
4. In the event that any term, covenant, or provision of this Release of All Claims shall be held by a court of competent jurisdiction or any regulatory or governmental body including the Commission to be invalid or against public policy, the remaining provisions of this Release of All Claims shall remain in full force and effect.
5. Qwest and **NAME OF CLEC** hereby represent to each other that they have reviewed and understand this Release of Certain Claims, and that neither Qwest nor **NAME OF CLEC** shall deny the validity of this Release of Certain Claims on the grounds that they did not understand the nature and consequences of this Release of Certain Claims or did not have the advice of counsel.
6. **NAME OF CLEC** represents that it has the authority to act on behalf of its corporate parents, affiliates, subsidiaries, and agents to release all claims stated herein and to execute this Release of Certain Claims.
7. **NAME OF CLEC** and its corporate parents, affiliates, subsidiaries, and agents represent that they have not transferred the right to enforce any claims stated herein to any other person or entity.
8. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

DATED this ____ day of _____, _____.

NAME OF CLEC, on its OWN behalf and on behalf of its corporate parents, affiliates, subsidiaries and agents

BY: _____

AND
QWEST CORPORATION

BY: _____

EXHIBIT 4

RELEASE OF CERTAIN CLAIMS

Section 4 Release

KNOW ALL PERSON BY THESE PRESENTS:

WHEREAS, on or about **DATE** The Arizona Corporation Commission ("Commission") approved a settlement agreement ("Agreement") between Qwest Corporation ("Qwest") and the Arizona Corporation Commission Staff ("Staff") with respect to dockets then pending before the Arizona Corporation Commission ("Commission"), specifically Docket No. RT-00000F-02-0271 (the "252(e) Unified Agreements; Docket No. T-00000A-97-0238 (the "271 Subdocket") and T-01051B-02-0871. These dockets shall be collectively referred to in this Agreement as the "Litigation."

WHEREAS, as part of the Agreement, certain competitive local exchange carriers certificated by the Commission to provide local exchange services in Arizona, who purchased interconnection services or unbundled network elements under Section 251(b) or (c) of the Act from Qwest may be entitled to receive a Discount Credit under the terms of the Agreement.

WHEREAS, **NAME OF CLEC**, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents, desires to receive the benefits contained therein, including execution of this Release of Certain Claims, as referenced in Paragraph 4 of the Agreement.

1. In consideration for the payment of Access Line Credits under the Agreement, the sufficiency of which are hereby acknowledged, **NAME OF CLEC**, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents, releases any and all claims, causes of action, rights, liabilities, complaints before or to a regulatory or governmental body, suits, requests for remedies or damages, and obligations of every nature, kind or description whatsoever regardless of what legal theory based, and regardless of whether grounded in common law, statute, administrative rule or regulation, tariff, contract, tort, equity or otherwise, including, but not limited to, claims or causes of action for fraud, misrepresentation, discrimination, violation of any law of the State of Arizona, violation of any tariff, breach of contract, the violation of federal statutes, rules or regulations, which **NAME OF CLEC** had, has, or which any other person had, or has through **NAME OF CLEC** based on Qwest having contracted to pay up to \$2 per month per line to other competitive local exchange carriers for Qwest having terminated intraLATA toll. This Release is further limited to only claims arising from the actions of Qwest that occurred during the time period of July 1, 2001 through February 28, 2002, and only claims relating to services purchased by **NAME OF CLEC** from Qwest in the State of Arizona.

2. This Release of Certain Claims shall be construed, interpreted, and enforced in accordance with the laws of the State of Arizona.

Section 4 Release (continued)

3. The provisions of this Release of Certain Claims may not be waived, altered, or amended, in whole or in part, without the written consent of Qwest and **NAME OF CLEC**.
4. In the event that any term, covenant, or provision of this Release of All Claims shall be held by a court of competent jurisdiction or any regulatory or governmental body including the Commission to be invalid or against public policy, the remaining provisions of this Release of All Claims shall remain in full force and effect.
5. Qwest and **NAME OF CLEC** hereby represent to each other that they have reviewed and understand this Release of Certain Claims, and that neither Qwest nor **NAME OF CLEC** shall deny the validity of this Release of Certain Claims on the grounds that they did not understand the nature and consequences of this Release of Certain Claims or did not have the advice of counsel.
6. **NAME OF CLEC** represents that it has the authority to act on behalf of its corporate parents, affiliates, subsidiaries, and agents to release all claims stated herein and to execute this Release of Certain Claims.
7. **NAME OF CLEC** and its corporate parents, affiliates, subsidiaries, and agents represent that they have not transferred the right to enforce any claims stated herein to any other person or entity.
8. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

DATED this ____ day of _____, _____.

NAME OF CLEC, on its OWN behalf and on behalf of its corporate parents, affiliates, subsidiaries and agents

BY: _____

AND
QWEST CORPORATION

BY: _____

EXHIBIT 5

RELEASE OF CERTAIN CLAIMS

Section 5 Release

KNOW ALL PERSON BY THESE PRESENTS:

WHEREAS, on or about **DATE** The Arizona Corporation Commission ("Commission") approved a settlement agreement ("Agreement") between Qwest Corporation ("Qwest") and the Arizona Corporation Commission Staff ("Staff") with respect to dockets then pending before the Arizona Corporation Commission ("Commission"), specifically Docket No. RT-00000F-02-0271 (the "252(e) Unified Agreements; Docket No. T-00000A-97-0238 (the "271 Subdocket") and T-01051B-02-0871. These dockets shall be collectively referred to in this Agreement as the "Litigation."

WHEREAS, as part of the Agreement, certain competitive local exchange carriers certificated by the Commission to provide local exchange services in Arizona, who purchased interconnection services or unbundled network elements under Section 251(b) or (c) of the Act from Qwest may be entitled to receive a Discount Credit under the terms of the Agreement.

WHEREAS, **NAME OF CLEC**, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents, desires to receive the benefits contained therein, including execution of this Release of Certain Claims, as referenced in Paragraph 5 of the Agreement.

1. In consideration for the payment of UNE-P Credits under the Agreement, the sufficiency of which are hereby acknowledged, **NAME OF CLEC**, on its own behalf and on behalf of its corporate parents, affiliates, subsidiaries, and agents, releases any and all claims, causes of action, rights, liabilities, complaints before or to a regulatory or governmental body, suits, requests for remedies or damages, and obligations of every nature, kind or description whatsoever regardless of what legal theory based, and regardless of whether grounded in common law, statute, administrative rule or regulation, tariff, contract, tort, equity or otherwise, including, but not limited to, claims or causes of action for fraud, misrepresentation, discrimination, violation of any law of the State of Arizona, violation of any tariff, breach of contract, the violation of federal statutes, rules or regulations, which **NAME OF CLEC** had, has, or which any other person had, or has through **NAME OF CLEC** based on Qwest having contracted to pay amounts up to \$13 and \$16 per line per month for Qwest having supplied inaccurate daily usage information. This Release is further limited to only claims arising from the actions of Qwest that occurred during the time period of November 1, 2000 through February 28, 2002, and only claims relating to services purchased by **NAME OF CLEC** from Qwest in the State of Arizona.

2. This Release of Certain Claims shall be construed, interpreted, and enforced in accordance with the laws of the State of Arizona.

Section 5 Release (continued)

3. The provisions of this Release of Certain Claims may not be waived, altered, or amended, in whole or in part, without the written consent of Qwest and **NAME OF CLEC**.
4. In the event that any term, covenant, or provision of this Release of All Claims shall be held by a court of competent jurisdiction or any regulatory or governmental body including the Commission to be invalid or against public policy, the remaining provisions of this Release of All Claims shall remain in full force and effect.
5. Qwest and **NAME OF CLEC** hereby represent to each other that they have reviewed and understand this Release of Certain Claims, and that neither Qwest nor **NAME OF CLEC** shall deny the validity of this Release of Certain Claims on the grounds that they did not understand the nature and consequences of this Release of Certain Claims or did not have the advice of counsel.
6. **NAME OF CLEC** represents that it has the authority to act on behalf of its corporate parents, affiliates, subsidiaries, and agents to release all claims stated herein and to execute this Release of Certain Claims.
7. **NAME OF CLEC** and its corporate parents, affiliates, subsidiaries, and agents represent that they have not transferred the right to enforce any claims stated herein to any other person or entity.
8. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

DATED this ____ day of _____, _____.

NAME OF CLEC, on its OWN behalf and on behalf of its corporate parents, affiliates, subsidiaries and agents

BY: _____

AND
QWEST CORPORATION

BY: _____