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Commissioner

DEC 3 2010

BOB STUMP

Commissioner

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IN THE MATTER OF QWEST CORPORATION'S FILING OF RENEWED PRICE REGULATION PLAN

DOCKET NO. : T-01051B-03-0454

QWEST CORPORATION'S RESPONSE TO STAFF'S MEMORANDUM AND PROPOSED ORDER FILED ON OCTOBER 13, 2010

Qwest Corporation ("Qwest") submits this response to the Staff Memorandum ("Memorandum") and proposed Order filed on October 13, 2010, in the above-captioned matter. On June 23, 2008, Qwest filed an application to extend its current Price Cap Plan (the "Plan") pursuant to a Settlement Agreement ("2006 Settlement") approved in Decision No. 68604 (March 23, 2006). Staff seems to agree that Qwest complied with provisions in the 2006 Settlement concerning a request to extend the Plan without modification. Although that should be a simple request to approve since it means that the status quo will not change, Staff recommends only a very brief continuation (6 months), coupled with a needless and burdensome duty to file an application for a rate case under Rule 103 by June 1, 2011, even though Qwest has not asked for a rate increase. Staff also adds another filing requirement that is not part of the process for renewal—specifically, a depreciation study which is a complex procedure not performed as part of telephone regulation in this state since 1997. As the Commission is aware, the telecommunications market and the nature of regulation have changed dramatically since

1 then. Staff also recommends reconvening a Quality of Service Task Force that concluded
2 in 2001 and infuses matters beyond the scope of this proceeding without any explanation
3 or evidence as to why these recommendations serve the public interest.

4 Qwest disagrees with Staff's recommendations because they: (i) are inconsistent
5 with Decision No. 68604 (March 23, 2006) and the 2006 Settlement, (ii) request
6 information that is, for the most part, inapplicable in today's competitive marketplace,
7 and (iii) inject issues that are outside the narrow scope of this proceeding. Qwest urges
8 the Commission to reject Staff's recommendations and approve the Plan without
9 modification as requested by the Company. The Staff's proposal, which calls only for
10 maintaining the existing Plan for six months, is a half step. Qwest urges the Commission
11 to approve a three year extension of the plan.

12 But, regardless of the term of extension, the information that Qwest must file for
13 subsequent renewals is specified in the Plan itself: When the Plan is up for renewal now
14 or in the future, Qwest may seek an extension by providing the information specified in
15 Section 18 of the Plan. A full-blown rate case shall not be necessary unless Qwest seeks
16 a rate increase.

17 Last, the Staff recognizes that the competitive telecom landscape has changed
18 significantly. Qwest agrees. Thus, it is appropriate in connection with this Price Cap Plan
19 renewal to examine whether other alternatives to outmoded monopoly rate of return
20 regulation can be implemented, including, but not limited to, classifying some of Qwest's
21 services as competitive under existing Commission rules.

22 **I. Staff's Recommendations Are Not Consistent with Decision No. 68604**
23 **or the 2006 Settlement.**

24 A. *The 2006 Settlement Already Sets Depreciation Rates and*
25 *Amortization Schedules for Any Extension of the Plan Beyond Its*
26 *Initial Term.*

Section 4 of the Settlement Agreement provides that Qwest will use depreciation

1 rates and amortizations that result in an approximate \$255 million reduction in annual
2 intrastate depreciation expenses during the first five years of the Plan, and an
3 approximate \$225 million annual reduction “in the intrastate depreciation expense
4 thereafter.” Staff argues that a limited review of the application performed by consultant
5 William Dunkel and Associates “suggested” that Qwest’s depreciation rates are no longer
6 appropriate since they do not reflect current market realities. However, Staff concedes
7 that this limited review was based on rate of return regulation, and that Qwest has been
8 afforded an alternative form of regulation as reflected in the Plan. Nonetheless, Staff
9 recommends that Qwest file a depreciation study on June 1, 2011. This recommendation
10 not only expressly contradicts the provisions of Section 4 and 18 of the Settlement, but
11 ignores the alternative form of regulation approved by the Commission in adopting the
12 2006 Settlement and continuation of the Plan.

13 Staff recommends that the Commission address depreciation issues in June 2011
14 because the Settlement “can be read to suggest that the Parties intended that the current
15 depreciation rates remain in effect for at least five (5) years prior to any change.” This
16 initial term will expire in April 2011. However, Staff fails to also recognize the second
17 component of depreciation rates, for not only does the 2006 Settlement confirm the
18 effective depreciation rate during the first five years of the Plan, but it also specifies what
19 the reduction in depreciation expense shall be thereafter. Staff does not address this
20 requirement under the Plan.

21 The last sentence of Section 4 reads “The Parties agree that Qwest will use these
22 rates and amortizations and corresponding reductions in intrastate depreciation expense
23 for the term of this Plan *and for all subsequent proceedings as applicable.*” (Emphasis
24 added.) Qwest’s application to extend the Plan without modification pursuant to Section
25 18 of the 2006 Settlement is a “subsequent proceeding.” Despite this clause, Staff is now
26 recommending that the Commission ‘revisit’ depreciation lives based on the premise that

1 no one could have predicted the significant changes that have taken place in the
2 telecommunications industry since the Plan was adopted. Staff is correct – no one can
3 predict the future. However, the purpose of entering into settlement agreements in
4 general is so that the parties have a set of regulatory ground rules on which to conduct
5 future business.

6 In this case, the regulatory assurances extended to Qwest by the 2006 Settlement
7 and the Plan included the depreciation rates and schedules fixed by the Plan “for its term
8 and all subsequent proceedings.” Staff seeks to depart from the Plan and the assurances
9 provided by it.

10 Under Section 29 of the 2006 Settlement, the parties agree not to seek an
11 adjustment in Qwest’s general rates and charges that are effective while the Plan is in
12 effect. This commitment continues until the Commission approves a renewed or
13 modified plan, or terminates the existing plan (“General Rate Change Moratorium”).
14 Since the 2006 Settlement became effective, the Commission has not approved a renewed
15 or modified plan, nor has it terminated the existing Plan. Section 29 bars Staff from
16 seeking an adjustment in Qwest’s general rates and charges now and until after the
17 moratorium has ended. Thus, under Section 29, Staff is barred from seeking to require
18 Qwest to file a rate case.

19

20 B. *The 2006 Settlement Sets Forth the Information Required Whenever
Qwest Initiates An Extension, Revision or Termination of the Plan.*

21 Section 18 of the Settlement Agreement specifically provides that when Qwest
22 initiates an extension, revision or termination of the Plan, and such action does *not*
23 increase Arizona regulated revenues in aggregate by more than a minimal amount, it will
24 only be required to submit information enumerated in subsections (a) through (g).¹ The

25

¹ Section 18 states:

26

Qwest shall initiate extension, revision or termination of the Renewed Price Cap Plan by submitting an application to the Commission for review by the Commission, Staff, RUCO, and any other interested

1 purpose of Section 18 was to ensure that Qwest would not have to file a rate case under
2 A.A.C. R14-2-103 to extend the Plan provided certain requirements are met, and Staff
3 readily concedes that Qwest's June 23, 2008 filing request complies with these
4 requirements. But Staff fails to recognize that the authority to request an extension,
5 revision or termination of the Plan is specifically reserved to Qwest and no other party by
6 the express language in the 2006 Settlement. The Plan itself provides that at the end of
7 the 3-year term, Qwest may propose to either continue under current terms and
8 conditions, revise the Plan with proposed changes, or terminate the Plan. Staff
9 Memorandum at 6-7. Since Qwest has only applied for an extension of the Plan without
10 modification, Staff's only recourse is to recommend either approval or denial of the
11 application based on the information submitted by Qwest pursuant to Section 18.

12 In addition to requiring a new depreciation study, Staff has recommended that

13 parties at least 9 months prior to the expiration of the Renewed Price Cap Plan. Qwest shall serve its
14 application upon all Parties to this Settlement Agreement.

15 If Qwest's application is for an extension, revision or termination that would increase Arizona
16 regulated revenues in aggregate by more than a de minimis amount, then Qwest shall file a rate case
17 under A.A.C. R-14-2-103, at least 9 months prior to the expiration of the Renewed Price Cap Plan.
18 The timeframes established herein for filing shall not alter Commission rules (A.A.C. R-14-2-103)
19 with respect to processing times. The procedural rules and timeframes established under A.A.C. R-14-
20 2-103 §§ 7 through 11 thereof shall apply. If Qwest's application for extension, revision or
21 termination of the Renewed Price Cap Plan does not increase regulated revenues in aggregate by more
22 than a de minimis amount, then Qwest does not have to file a rate case under A.A.C. R-14-2-103 and
23 Qwest shall file its application at least 9 months prior to the expiration of the Renewed Price Cap Plan.
24 Qwest's application will contain the following information in addition to any other information
25 required by rule or statute:

- 26 a. A detailed statement of price and revenue changes effected during the initial term of the Renewed Price Cap Plan;
- b. A statement of the aggregate investment and retirements in plant, and associated depreciation for the preceding calendar year;
- c. A statement of the operating income and return on investment for the preceding calendar year; and
- d. Service quality comparative data during the term of the Renewed Price Cap Plan;
- e. Any proposed changes to the Renewed Price Cap Plan and the reasons therefore;
- f. Any change to the list of services included in the various Baskets;
- g. Such other information as Staff may request.

Further, Staff may request and Qwest shall provide such other additional information as Staff determines necessary for the analysis of Qwest's application.

Although subsection (g) is fairly broad in allowing Staff to request other information from Qwest, the scope cannot be so broad as to swallow the issues already addressed in the 2006 Settlement, which include depreciation issues and matters related to informational filing requirements under Section 18.

1 Qwest file the information required by A.A.C. R14-2-103 in this proceeding by June 1,
2 2011 – or in other words, submit an expensive and time consuming full-blown rate
3 application, which would heavily tax the resources of both the Company and the
4 Commission Staff. The excessive nature of that requirement is evidenced by the
5 language of Rule 103 itself, which states that it only applies when a company proposes to
6 increase its rates or charges.² Staff has not established (or even suggested) that a renewal
7 of the Plan will increase Arizona regulated revenue “in aggregate by more than a de
8 minimis amount.”

9
10 C. *The Settlement Agreement Already Addresses Service Quality Issues
In Detail.*

11 At page 4 of its Memorandum, Staff recommends that the Commission
12 immediately reconvene the Task Force that was established over 10 years ago as a
13 condition of the Qwest/U S West merger in Decision No. 62672, and that ended 9 years
14 ago. Staff does not provide a reason for its recommendation beyond a letter filed two
15 years ago on October 24, 2008 by former Commissioner Mundell, and a vague reference
16 to “findings” from a review of service quality issues conducted by Staff that are neither
17 set forth nor explained in the Memorandum. In fact, the purpose of the Task Force under
18 Decision No. 62672 was limited to determining whether a single audit of service quality
19 should be undertaken. Decision No. 62672 established a Task Force which “*may*
20 *recommend to the Commission one audit* at that time to be conducted by an independent
21 auditor[.]” Decision No. 62672, at 15:17-28 (emphasis added). After making its
22 recommendation, the Task Force’s role ended, as evidenced by the rest of the language of
23 that portion of the order: “The *Commission Staff* shall determine, subject to Commission
24 approval, whether further audits or reporting requirements are necessary, based upon the

25
26 ² R14-2-103 A. 1: “Purpose. The purpose of this General Order is to define the specific financial and statistical information required to be filed with a request by a public service corporation . . . with regard to proposed increased rates or charges.” (Emphasis added).

1 results of this audit.” The *Final Report* of the Quality of Service Task Force was filed by
2 the Commission Staff on March 30th, 2001. There has not been a Quality of Service Task
3 Force to reconvene for nine years, and Staff provides no basis for reconvening such a task
4 force today.

5 Section 15 of the Settlement Agreement addresses service quality issues that
6 “ensure service quality during the term of the Renewed Price Cap Plan.” Pursuant to this
7 section, Qwest is subject to penalties if certain service quality goals are not met, as
8 defined in the company’s Service Quality Plan Tariff. Further, Qwest implemented
9 Staff’s other detailed recommendations regarding service quality issues. Nothing in
10 Staff’s Memorandum evidences that a service quality issue exists at this time, and
11 ordering a Quality of Service Task Force in the absence of any evidence supporting the
12 recommendation would not serve the public interest. In fact, data submitted with
13 Qwest’s renewal application demonstrates that most service quality measures have
14 improved since the Qwest / U S WEST merger.

15
16 **II. Filing a New Depreciation Study and R14-2-103 Rate Case Information**
17 **Would Be Unduly Costly and Burdensome, and is Unnecessary in**
18 **Today’s Competitive Marketplace.**

19 Staff is proposing that Qwest file a depreciation study on June 1, 2011, but offers
20 no explanation of what it means by a depreciation study. Qwest assumes that the
21 depreciation study proposed by Staff would need to meet the requirements of A.A.C.
22 R14-2-102, which constitutes what is known in regulatory accounting as a “full study.”
23 A brief review of Qwest’s depreciation history in Arizona is necessary to place Staff’s
24 recommendation in historical context.

25 **A. *Qwest’s Depreciation in Arizona – Brief History***

26 Qwest’s last full study for Arizona is dated November 1, 1997--when the company
was U S WEST Communications. In Decision No. 61945, the Commission issued an

1 order which resolved a dispute concerning the method to be used in determining Arizona
2 intrastate depreciation rates. However, Qwest and Staff did not agree on the appropriate
3 inputs for seven accounts and filed separate reports. In Decision No. 62507 (May 4, 2000
4 – *Qwest's Last Depreciation Order*), the Commission rejected Staff's recommendation
5 that U S WEST file a depreciation study every three years. During the Price Cap Plan
6 proceeding (Docket No. T-01051B-99-0105), the parties contested various depreciation
7 issues pertaining to the calculation of Qwest's revenue requirement. As part of a
8 settlement in that proceeding, Qwest and Staff settled the amount of Qwest's revenue
9 requirement, but did not address or settle any of the contested revenue requirement
10 calculation issues, some of which were subsequently settled in the 2006 Settlement
11 Agreement for the Renewed Price Cap Plan at Section 4.

12 B. *Qwest's Federal Depreciation Issues – Brief History*

13 The Federal Communications Commission's (FCC) 1993 *Depreciation*
14 *Simplification Order* adopted a simplified depreciation prescription process for AT&T
15 and incumbent LECs.³ With regard to incumbent LECs, the order provided for the
16 establishment of ranges for the life and salvage factors that carriers could use to compute
17 their depreciation rates.⁴

18 After the 1993 *Depreciation Simplification Order* incumbent LECs remained
19 subject to the FCC's rules under Sections 32.2000(g) and 43.43 for purposes of
20 establishing depreciation rates. However, the *Depreciation Simplification Order* allows
21 incumbent LECs that propose life and salvage factors within the FCC-approved ranges to
22 avoid filing detailed cost support (i.e., full studies) for those rates.⁵ In contrast, a carrier
23 that chooses to propose depreciation factors outside of the FCC-approved ranges must
24

25 ³ 8 FCC Rcd 8025, 8063 (1993)

26 ⁴ Id at 8048. See also *Simplification of the Depreciation Prescription Process, Second Report and Order*, 9 FCC Rcd 3206, 3208 (1994); *Third Report and Order*, 10 FCC Rcd 8442, 8444 (1995).

⁵ See 47 CFR § 43.43(b) and (c). See also *Second Report and Order*, 9 FCC Rcd at 32017.

1 provide detailed cost support (i.e. full studies) to justify them. The FCC has not reviewed
2 a full depreciation study for more than ten years. The most recent FCC depreciation
3 prescription order was released in August of 2000, for Verizon Hawaii & Verizon
4 Northwest (15 FCC Rcd 16214). The FCC's depreciation group was disbanded roughly
5 10 years ago.

6
7 C. *Filing a New Depreciation Study Would Be Costly, Overly
8 Burdensome and Out of Step with Today's Competitive Market.*

9 Qwest has not prepared a full depreciation study for any jurisdiction since the mid-
10 1990s. The FCC stopped reviewing full studies ten years ago and no state has required
11 one in this century. Now Staff proposes that Qwest be required to conduct a full study
12 for Arizona. In less than ten years Qwest has lost 52.5% of its total access lines and
13 61.3% of its residential access lines in Arizona, as many customers have taken advantage
14 of cable telephone, wireless, CLEC and Voice over Internet Protocol (VoIP) options. In
15 light of this intense competition, and Qwest's continuing access line loss, Staff's proposal
16 to resurrect a long abandoned practice serves no public interest or purpose.

17 Preparation of a full study would require approximately six months of work by a
18 team of three or four capital recovery experts. Prior to the turn of the century, U S West
19 staffed a capital recovery department of roughly 50 people whose responsibility included
20 the preparation and support of full studies. That staff is long gone. Qwest's capital
21 recovery department now consists of four people whose principal responsibility is
22 maintenance of depreciation records and updating of Qwest's depreciation for use in
23 financial reports filed with the Securities and Exchange Commission. Simply put, Qwest
24 does not have the personnel to conduct a full study for Arizona.

25 D. *Filing Information Required with a R14-2-103 Rate Case
26 Application is Unduly Burdensome, Especially In Light of Today's
Competitive Market for Telecommunication Services.*

1 Staff recommends that Qwest file information required for a rate case application
2 on June 1, 2011 – despite the fact that the instant application would not increase Arizona
3 regulated revenue. When compared to the extension requirements defined in Section 18
4 of the 2006 Settlement, the amount of information and time necessary to prepare an R14-
5 2-103 filing is staggering. For instance, information provided for extension pursuant to
6 the 2006 Settlement requires approximately four (4) exhibits on about thirty-seven (37)
7 pages of documents, the bulk of which would include an exhibit on price changes during
8 the term of the Plan, as well as information on service quality. Financial information
9 would be provided on three (3) exhibits over nine (9) pages. By contrast, a rate case
10 filing would include over sixty (60) schedule tables and sub-tables on over one hundred
11 and twenty (120) pages of documents. Furthermore, the finance testimony required to
12 support a rate case filing would be extensive, requiring experts on depreciation, cost of
13 capital and revenue requirements.⁶ Major requirements of a rate case filing would have
14 to be outsourced because Qwest lacks the necessary staff capable of the following tasks:

- 15 - Reconstructed New Less Depreciation (RCND) Study, Schedule B
- 16 - Cost of Capital
- 17 - Cash-Working Capital
- 18 - Depreciation Full Study

19 In addition, Qwest would need to divert internal resources from merger related activities
20 and other important and productive work in order to gather data, conduct analyses and
21 prepare the myriad schedules and adjustments required of a R14-2-103 filing.

22 Such a heavy commitment of resources over an extended period of time would
23 present a huge challenge. Qwest has far fewer staff dedicated to regulatory work than it
24 did when it last prepared a R14-2-103 filing in 2004. Qwest has prepared no other rate
25 cases since then and most of the specialized staff that worked on rate cases has since left

26 ⁶ The Company does not currently have in-house depreciation or cost of capital witness.

1 the business. In addition, workloads in Qwest's Regulatory Finance department during
2 the period of mid-February through mid-June is already heavy with a focus on producing
3 state annual reports to Commissions across the fifty states for Qwest and its affiliates.

4 By requiring Qwest to make a rate case filing on June 1, 2011, the Commission
5 would mandate the company to commit a significant amount of time, resources and
6 expense that, quite frankly, Qwest can ill afford to commit. Further, given the
7 Commission's budgetary constraints and the pressures on Staff's time and workload,
8 Qwest does not believe that a rate case filing is in the interest of the Commission. Quite
9 simply, such a filing is not in the interests of the Commission, the company or its
10 ratepayers. If the Commission wishes to take a "fresh" look at Qwest or possibly a newly
11 merged entity, there are other avenues the Commission might choose to meet this
12 objective. However, a fresh look should not mean an expensive and outdated analysis
13 performed through the lens of traditional rate of return regulation. Instead, a fresh look
14 should reflect the alternative method of regulation currently authorized under the Plan, or
15 involve an exploration of other means of rate regulation that are appropriate in a
16 competitive environment.

17 Staff concedes that the Plan is an alternative form of regulation that is geared
18 towards the continued development of competitive wholesale and retail markets. Yet
19 despite the highly competitive telecommunications market that has developed over the
20 past decade in Arizona—a competitive environment that Staff itself acknowledges⁷—
21 Staff would have the Commission revert to a regulatory approach that only makes sense
22 in the closed environment of a monopoly provider. Staff would impose these outdated

23 ⁷ In his testimony in the CenturyLink-Qwest Merger proceeding (Docket Nos. T-01051B-10-0194 et al.), Mr.
24 Armando Fimbres of the Staff acknowledges that "Qwest continues to face significant competition from one
25 facilities-based CLEC, Cox Arizona Telcom, L.L.C. ("Cox"), in the residential market. The impact of intermodal
26 competition in the residential market from Wireless and VoIP is difficult to measure but is undeniably present and
increasing." (Direct testimony of Armando Fimbres, October 12, 2010, page 7) He also states that "[t]he business
market, particularly the Enterprise Market, is also very competitive but differs from residence in the type and
number of alternative providers . . ." (Direct testimony of Armando Fimbres, October 12, 2010, page 7).

1 requirements on Qwest, even though Qwest's major competitors in Arizona, such as Cox
2 Communications, are under no such burdensome requirements. The Commission should
3 not revert to historical monopoly practices that are no longer relevant in today's
4 competitive environment.

5 6 **CONCLUSION**

7 Staff has failed to articulate how approval of Qwest's application to extend the
8 Plan without modification might hurt Arizona ratepayers. The aggregate increase, if any,
9 to Arizona regulated revenues would be limited to those already approved in Decision
10 No. 68604. Qwest has lost a considerable amount of market share in both residential and
11 business service lines as competitors vie for local and long-distance customers. Qwest
12 respectfully submits that traditional rate of return regulation is not the necessary or
13 appropriate vehicle to take a fresh look at Qwest in light of the changes in the
14 telecommunications industry over the past decade, especially when an alternative form of
15 regulation has already been approved and has worked to the customers' advantage since
16 its inception.

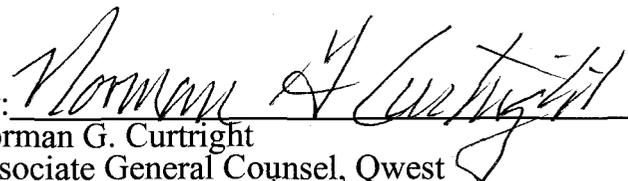
17 Qwest submits that the Staff's proposal to extend this Price Cap Plan for only six
18 months is an inadequate resolution, and one which guarantees only the expenditure of
19 large amounts of resources. The more reasonable resolution is to approve the extension
20 of the current Price Cap Plan for three more years.

21 Whether the Commission decides to extend the current Price Plan for six months
22 or 3 years or some other period of time, the information that Qwest must file for
23 subsequent renewals are specified in the Plan itself: When the Plan is up for renewal now
24 or in the future, Qwest may seek an extension by providing the information specified in
25 Section 18. Under the Plan, a full-blown rate case filing shall not be necessary unless
26 Qwest seeks a rate increase.

1 Last, all concerned should look at the effect of competition on rate setting in
2 Arizona. Without disturbing the terms of the current Plan, Qwest believes that a request
3 for renewal of the Price Cap Plan should include an examination of other alternative
4 means of rate setting in a competitive environment. One such alternative may be to
5 classify some of Qwest's services as competitive under existing Commission rules.

6 RESPECTFULLY SUBMITTED this 3th day of December, 2010.

7
8 **QWEST CORPORATION**

9 By: 
10 Norman G. Curtright
11 Associate General Counsel, Qwest
12 20 E. Thomas Rd., 16th Floor
13 Phoenix, Arizona 85012
14 Attorney for Qwest Corporation
15
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1 **ORIGINAL** and 13 copies of the foregoing
filed this 3rd day of December, 2010 with:

2 Docket Control
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington Street
Phoenix, AZ 85007

5 **COPIES** of the foregoing **hand-delivered**
6 this same day to:

7 Janice Alward, Chief Counsel
8 Legal Division
9 ARIZONA CORPORATION
COMMISSION
10 1200 West Washington Street
11 Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
ARIZONA CORPORATION
COMMISSION
1200 W. Washington Street
Phoenix, AZ 85007

10 Maureen Scott, Staff Attorney
11 Legal Division
12 ARIZONA CORPORATION
COMMISSION
13 1200 W. Washington Street
Phoenix, AZ 85007

14 **COPIES** of the foregoing **mailed and/or emailed**
15 this same day to:

16 Joan S. Burke, Esq.
17 LAW OFFICE OF JOAN S. BURKE
18 1650 North First Avenue
Phoenix, AZ 85013

18 Jeffrey W. Crockett, Esq.
19 Brownstein Hyatt Farber Schreck
20 40 N. Central Ave., 14th Floor
Phoenix, AZ 85004

21 Brian Thomas
22 Vice President Regulatory
23 tw telecom, Inc.
24 223 Taylor Avenue, North
Seattle, WA 98109

Timothy Berg, Esq.
Theresa Dwyer, Esq.
Darcy R. Renfro, Esq.
FENNEMORE CRAIG, PC
3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012

Michael W. Patten, Esq.
ROSHKA DeWULF & PATTEN
One Arizona Center
400 E. Van Buren, Suite 800
Phoenix, AZ 85004

Mark A. DiNunzio
COX ARIZONA TELCOM, LLC
MS: DV3-16, Bldg. C
1550 West Deer Valley Road
Phoenix, AZ 85027

1 Albert Sterman
2 ARIZONA CONSUMERS COUNCIL
3 2849 E. 8th Street
4 Tucson, AZ 85716

4 Dan Pozefsky
5 Chief Counsel
6 RUCO
7 1110 West Washington, Suite 220
8 Phoenix, AZ 85007

7 Martin A. Aronson, Esq.
8 MORRILL & ARONSON, PLC
9 One East Camelback Road, Suite 340
10 Phoenix, AZ 85012

Thomas H. Campbell, Esq.
Michael T. Hallam, Esq.
LEWIS and ROCA
40 N. Central Avenue
Phoenix, AZ 85004

Peter Q. Nyce, Jr.
Regulatory Law Office
U.S. ARMY LITIGATION CENTER
901 N. Stuart Street, Suite 713
Arlington, VA 22203

Gary Yaquinto
AIC
2100 N. Central Avenue, Suite 210
Phoenix, AZ 85004

10 By: 
11 _____

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13
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