MEMORANDUM

TO: THE COMMISSION

FROM: Utilities Division

DATE: June 7, 2002

SUBJECT: STAFF REPORT AND RECOMMENDATION IN THE MATTER OF QWEST CORPORATION'S COMPLIANCE WITH SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996 (DOCKET NO. RT-00000F-02-0271)

I. Introduction

In accordance with the Commission's May 17, 2002 Procedural Order, the Staff of the Arizona Corporation Commission ("ACC Staff") hereby files its report and recommendation on Qwest Corporation's ("Qwest") compliance with Section 252(e) of the Telecommunications Act of 1996 ("1996 Act" or "Federal Act"). The Staff believes that Qwest has interpreted the provisions of Sections 251 and 252 of the Federal Act too narrowly and that Qwest should be required to file certain of the agreements with the Commission for approval under 47 U.S.C. Section 252(e). Staff's interpretation of Federal Law is that the nondiscrimination requirements mandate an expansive interpretation of the agreements which must be filed under 47 U.S.C. Section 252(e). The transparency of ILEC-CLEC dealings which occurs only through compliance with Section 252(e) is critical to ensure nondiscriminatory treatment of all carriers operating in Arizona by Qwest and for the Commission to adequately perform its responsibilities under the Federal Act as well. Once the agreements are filed and approved, other CLECs in Arizona will have the right to opt into them, or any portion thereof, if they so desire pursuant to 47 U.S.C. Section 252(i). This is vital to carry out the primary objective of Section 252(e)'s nondiscrimination provisions. Of the approximately 100 filed agreements by Qwest, Staff has concerns with 30 agreements.[1] Staff has determined, based upon its review of the contracts, that 25 contracts should be filed under Section 252(e).

Staff recommends the assessment of fines against Qwest for noncompliance with its filing obligations with this Commission under Section 252(e) of the Federal Act. Staff is recommending an amount of $3,000 per agreement since it appears to Staff that Qwest did not act in bad faith. Rather, it appears to Staff that Qwest acted based upon a good faith interpretation of the relevant provisions of Federal law. Twenty-three agreements have been classified by Staff as Category 1 Agreements that should have filed with the Commission for approval. The total fine for these 23 Category 1 Agreements is $69,000.00.

However, Staff is recommending a higher fine of $5,000.00 per agreement for those agreements which had provisions in which CLECs agreed they would not participate in regulatory proceedings before the ACC. Staff believes that higher fines are warranted in this case since agreements which attempt to suppress participation by all parties for full development of the record in regulatory proceedings before the Commission are not in the public interest. Staff has identified

[1] These 30 agreements contain twenty-three Category 1 Agreements and seven Category 2 Agreements.

seven agreements that contained provisions of this nature and that, therefore, would be subject to the higher fine. The fine in this instance would be $35,000. ("Category 2 Agreements"). Out of the seven Category 2 Agreements, only two of these agreements are included in the twenty-five that need to be filed with the Commission. Together, the total recommended fine amount for the 30 Category 1 and Category 2 agreements is $104,000.00. The Commission may also want to consider the imposition of other non-financial remedies.

In the future, Qwest has committed to overfile, i.e., to file and seek approval of every agreement with a CLEC that even arguably falls within the broadest standard that any party has suggested, pending the FCC's consideration of its Petition. Staff believes nonetheless that a procedure is necessary in the event interpretational issues of this nature arise in the future. Staff, therefore, recommends a process in which Qwest may at any time file an agreement with the Commission Staff, on a confidential basis, for a determination as to whether the agreement is encompassed within the filing requirements of Section 252(e).

To ensure ongoing compliance by Qwest with its obligations under Section 252(e) of the Federal Act, Staff is recommending that Qwest be required to file a compliance filing on a quarterly basis which lists all agreements it has entered into with other carriers, the subject matter of those agreements, and a list of all agreements that were actually filed with the Commission for approval pursuant to Section 252(e) of the Federal Act.

Finally, while Qwest has filed a Petition for a Declaratory Ruling with the FCC on the issues raised herein, Staff recommends that the Commission proceed to address the issues and that it's resolutions of these issues can be subject to any national guidance if and when the FCC elects to rule on Qwest's Petition. Staff also recommends that the Commission require Qwest to submit 25 of the unfiled agreements with the Commission so that other carriers can "opt in" to them if they so desire. Staff believes that this is critical to ensure that the nondiscrimination provisions of the Federal Act are carried out which is particularly important when competition in the local market is in its nascent stages. In Staff's opinion, if competition is to flourish, it will be more likely to occur in a transparent marketplace.

II. Procedural History

On February 14, 2002, the Minnesota Department of Commerce filed a Complaint with the Minnesota Public utilities Commission ("MPUC") against Qwest alleging that Qwest had entered into interconnection agreements, or amendments to interconnection agreements but had not filed those agreements with the MPUC for approval as required by Section 252(e) of the Federal Act. Qwest filed an Answer to the Complaint alleging, in part, that the agreements were not "interconnection agreements", and therefore, Qwest had no obligation under Section 252(e) of the Federal Act to file the agreements with the MPUC for approval.

Upon learning of the Minnesota complaint, several other Commissions in the Qwest region, including the ACC, commenced investigations of their own to determine whether any interconnection agreements had been entered into between Qwest and a CLEC that had not been filed with the State commission for approval. The ACC's Utilities Division Director sent a letter to Qwest's Vice-President for Arizona and Regional Vice-President for Qwest, requesting that the

Company file any agreements between Qwest and Arizona CLECs which had not been filed with the ACC for review and approval. Staff later made a similar request of all CLECs certified to operate in Arizona.

On March 11, 2002, Qwest responded in a letter to the Chairman of the Commission that it believed it had complied with Section 252(e) of the 1996 Act and that it had exercised good faith in deciding when a particular contract arrangement with a CLEC requires Commission filing and prior approval, and when it does not. Qwest also stated that it believed that the judgments it made in this area, complied with a fair and proper reading of the Act. Along with its letter, Qwest included its Answer to the Minnesota complaint denying the allegations and copies of the agreements identified by the Minnesota Department of Commerce that involved CLECs operating in Arizona.

In a subsequent letter to the Commission's Utilities Division Director, Qwest submitted copies of additional agreements which it believed also required a determination as to whether approval under the 1996 Act was required. Qwest requested confidential treatment of the agreements and subsequently claimed that the agreements fell into one of the following four categories: 1) business-to-business administrative procedures at a granular level; 2) agreements settling historical disputes; 3) matters falling outside the scope of Sections 251 and 252; and 4) provisions which merely indicate that Qwest will comply with future orders of pending proceedings.

AT&T Communications of the Mountain States, Inc. ("AT&T") and TCG Phoenix ("TCG") filed a Motion in the Section 271 proceeding (Docket No. T-00000A-97-0238) now pending before the Commission to reopen the record in portions of the case to determine whether Qwest was actually 271 compliant given its actions in not filing these agreements with the Commission for approval under the Federal Act.

Staff filed a response alternatively recommending that the Commission first commence a separate investigation into Qwest's compliance with Section 252(e) of the 1996 Act, with parties given an opportunity to use any findings in the 271 proceeding as necessary. The Hearing Division denied AT&T's Motion to Reopen the Section 271 record to consider the various agreements and by separate Procedural Order commenced a separate investigation into this issue. Staff filed a request for a procedural schedule in this new Docket on May 7, 2002.

On May 9, 2002, the Commission set a procedural schedule and because of the interrelationship of the Commission's deliberations under Section 271 of the Federal Act, all intervenors in the Section 271 proceeding were deemed to be intervenors in this Docket. Pursuant to the May 9, 2002, Procedural Order, interested parties, the Staff and Qwest negotiated the provisions of a Protective Order which was subsequently approved by the Hearing Division on May 8, 2002. Thereafter, on May 10, 2002, Qwest filed a Notice of Production of documents through which it formally submitted into the record all agreements with other carriers in Arizona which had not been submitted to the Commission for approval under Section 252(e) of the Federal Act, and which arguably could fall within its provisions. On May 13, 2002, Qwest also filed extensive comments on the filing obligations of telecommunications carriers under Section 252 of the Federal Act. AT&T and Time Warner TeleCom of Arizona ("Time Warner") filed responsive comments on May 28, 2002, and May 24, 2002 respectively. In addition, responsive comments were filed by the

Residential Utilities Consumer Office ("RUCO") on May 24, 2002. Qwest filed Reply Comments on June 1, 2002.

On May 23, 2002, Qwest also filed with the FCC a Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1). On May 29, 2002, interested parties submitted initial comments. Parties filing initial comments with the FCC included the Minnesota Department of Commerce, the Iowa Utilities Board, the Minnesota Attorneys General Office and the Iowa Consumer Advocate, WorldCom, TouchAmerica, AT&T, Focal Communications Corporation and PAC-West Telecomm, Inc., Sprint, PageData and New Edge Networks. Reply comments are due to be filed with the FCC on June 13. 2002.

The following report and recommendation contains Staff's analysis and findings on the issues raised based upon its review of the agreements submitted by Qwest, the provisions of Federal law which govern this issue, and the comments of the parties.

III. Background

The 1996 Act was designed to move the final vestiges of the monopolized telecommunications market, i.e., the local market, to a competitive one, and in so doing "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunication technologies." Goldwasser v. Ameritech Coproration, 222 F.3d 390, 393 (7th Cir. 2000) quoting Preamble to the Act. Congress, realizing that this move and its benefits would take time and oversight, "entrusted the FCC and the state public utility commissions with the task of overseeing the transition from the former regulatory regime to the Promised Land where competition reigns, consumers have a wide array of choice, and prices are low." Id. at 391. Two indispensable parts of this planned move are the state commission's review of all agreements entered into between ILECs and CLECs to ensure the agreements do not discriminate and are in the public interest and the ability of the CLECs to have available to them the same interconnection, service, and network elements made available to any other CLEC at the same price.

47 U.S.C. Sections 251 and 252 and the FCC's implementing rules and regulations provide the basis for the Commission's review of the issue raised, i.e., the extent of Qwest's obligation to file agreements with the Commission under Section 252(e). Section 251 sets out obligations applicable to all telecommunications carriers and all local exchange carriers imposing certain interconnection obligations and other duties designed to foster the development of a competitive, seamless nationwide telecommunications network. Section 251 imposes more stringent requirements on incumbent local exchange carriers to open their local markets including obligations relating to interconnection, the provision of unbundled access to their networks, resale obligations and collocation obligations. Section 252 of the Federal Act sets out a framework for negotiation and, if necessary, arbitration of interconnection agreements and requires approval by the State commission of all interconnection agreements entered into between the incumbent and other carriers.

Section 252 of the 1996 Act encourages the parties to reach agreement first through private negotiation; failing that the Act sets up a scheme for compulsory arbitration by the State commission. 47 U.S.C. Section 252(a)(1) provides that upon receiving a request for interconnection, services or network elements pursuant to Section 251, an ILEC may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of Section 251. The agreement is to include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Federal Act, is to be submitted to the State commission under Section 252(e).

47 U.S.C. Section 252(e) provides that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies. A State Commission may only reject a negotiated agreement if:

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion thereof is not consistent with the public interest, convenience, and necessity;

Section 252(e) goes on to describe the conditions which must be present for a State commission to reject an arbitrated agreement as well. A State commission may only reject an agreement (or any portion thereof) adopted by arbitration if it finds that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251, or the standards set forth in subsection (d) of Section 252.

If the State commission does not act on the filing of a negotiated agreement within 90days, the agreement is deemed approved. 47 U.S.C. § 252(e)(4). The State commission has 30 days approve an arbitrated agreement or it is deemed approved under this same provision of the Federal Act.

The State commission is required to "make a copy of each agreement approved under subsection (e) ... available for public inspection and copying within 10 days after the agreement or statement is approved." 47 U.S.C. § 252(h). "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and condition as those provided in the agreement." 47 U.S.C. § 252(i). Thus, Congress intended not only that State commissions safeguard against discriminatory agreements and agreements that are not in the public interest, but that the States become a sort of repository for agreements from which CLECs can pick and choose agreements and terms favorable to their individual situations from those agreements previously entered into by ILECs and competitors and approved by the State commission. This very important function performed by State commissions, might be called a "collect and publicize" function which acts to ensure transparency of transactions

between the ILEC and the various CLECs so that all carriers can be assured that they are obtaining nondiscriminatory treatment by the ILEC .

The importance of the "collect and publicize" function performed by State commissions was underscored by the FCC, in considering whether agreements negotiated prior to the Act were required to be filed, in the following passage:

> State commissions should have the opportunity to review all agreements, including those that were negotiated before the new law was enacted, to ensure that such agreements do not discriminate ... and are not contrary to the public interest.... Requiring all contracts to be filed also limits an incumbent LEC's ability to discriminate among carriers, for at least two reasons. First, requiring public filing of agreements enables carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others. Second, any interconnection, service or network element provided under an agreement approved by the state commission under section 252 must be made available to any other requesting telecommunications carrier upon the same terms and conditions, in accordance with section 252(i) ....Conversely, excluding certain agreements from public disclosure could have anticompetitive consequences. For example, such contracts could include agreements not to compete.[2]

In summary, the purpose of the filing requirement is threefold: 1) to prevent discrimination; 2) to ensure agreements are in the public interest, and; 3) to allow CLECs to "pick and choose" agreements and terms. These three express functions of the filing requirement must be considered in determining when an ILEC-CLEC agreement falls within the scope of the filing requirement.

The FCC adopted regulations implementing the provisions of Sections 251 and 252 in its Local Competition Order. The FCC's authority to adopt rules implementing Sections 251 and 252 of the Federal Act was challenged but subsequently upheld in Iowa Utilities Board v. FCC, 525 U.S. 366 (1999).. While the FCC's rules do not specifically address whether settlement agreements or detailed business to business arrangements between an ILEC and another carrier are subject to filing under the Act[3], the discussion on 252(e) contained in its Local Competition Order provides, in Staff's opinion, some important guidance on the issues raised, as discussed later.

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[2] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Provider, 11 FCC Rcd 15499, para. 167 (rel. 1996)("Local Competition Order").

[3] 47 C.F.R. 51.303 entitled "preexisting agreements" provides as follows:

(a) All interconnection agreements between an incumbent LEC and a telecommunications carrier, including those negotiated before February 8, 1996, shall be submitted by the parties to the appropriate state commission for approval pursuant to section 252(e) if the Act.

(b) Interconnection agreements negotiated before February 8, 1996, between Class A carriers, as defined by 32.11(a)(1) of this chapter, shall be filed by the parties with the appropriate state commission no later than June 30, 1997, or such earlier date as the state commission may require.

(c) If a state commission approves a preexisting agreement, it shall be made available to other parties in accordance with section 252(I) of the Act and 52.809 of this part. A state commission may reject a preexisting agreement on the grounds that it is inconsistent with the public interest, or for other reasons set forth in section 252(e)(2)(A) of the Act.

IV. Discussion

A. Position of Qwest

Qwest focuses on the language of 252(a)(1) in its interpretation of the scope of the filing requirement. Qwest argues that section 252(a), in the interest of allowing ILECs and CLECs to have freedom and flexibility in the terms of their business dealings with each other, allows for items that do not relate to 'matters of charges' to be decided between the carriers without the need for such agreements to be filed with the Commission for approval. Qwest Comments. at 3. Qwest believes that any broader interpretation of Section 252(a)(1) results in regulatory micro-management. Id. at 3-4. Qwest reasons that because the intent of the 1996 Act is to promote competition and ease regulation, the scope of the filing requirement must be narrowly read. Id. at 5. Qwest also expresses concern over the administrative burden placed on the State commission by the review process. Id. Qwest concludes that "the filing and 90-day advance approval requirements of Section 252(a) can most logically be construed to apply to those provisions that are most critical to be disclosed and subjected to a regulatory review – *i.e.*, the 'detailed schedule of itemized charges for interconnection and each service or network element' referred to in Section 252(a)(1), as well as associated service descriptions." Id. at 4-5.

As a result of its interpretation of the filing statutes, Qwest argues "that Section 252's filing and approval requirements do *not* apply to the types of contractual provision at issue in the Arizona Agreements:

- contract provisions defining business-to-business dispute resolution procedures or other administrative matters that spell out the details of interactions between Qwest and its customers at a granular level;

- contract provisions that settle ongoing disputes or litigation between the parties, whether relating to resolution of differences over the ILEC's and the interconnecting carrier's respective past performance, whether the settlement relates to interconnection agreements, billing disputes, or other matters; and

- contract provisions relating to matters that are not subject to Section 251, such as FCC-regulated interstate common carrier service, state-regulated intrastate long distance service, on-regulated services like information services, and network elements that have been found not to satisfy the statutory "necessary" or "impair" standards.

Qwest Comments at p. 5-6.

Qwest would include issues such as account team support, the mechanics of provisioning and billing for ordered interconnection services or UNEs, or dispute resolution in the first category of agreements. Qwest Comments at p. 9. Qwest states that such business process terms go well beyond the level of detail that Section 252 of the 1996 Act requires to be filed in an interconnection

agreement. Qwest states that it has committed to CLEC-specific escalation procedures for dispute resolution, or actions to address CLEC-specific business issues regarding their use of UNEs. Qwest has agreed to meetings and similar administrative processes to review business questions and concerns. Id. Escalation clauses are contractual determinations that in the event of disagreement, specified individuals within the respective companies will be brought in to work things out. Qwest cites to provisions in an Eschelon agreement containing an implementation plan for provisioning services. Qwest also cites to a WorldCom agreement providing for quarterly meetings between Qwest and WorldCom executives and for escalation procedures for resolving disputes short of litigation.

Qwest states that the second category relates to agreements to settle historical disputes. These matters typically relate to differences between Qwest and a CLEC over their respective past performance under an interconnection agreement, or billing disputes between them. Qwest argues that such settlement agreements do not need to be filed under Section 252. As an example, Qwest maintains that settlement agreements that resolve disputes between ILECs and CLECs over past billing disputes or other matters are not interconnection agreements under Section 252. Qwest argues that this should hold true even if the dispute related to prior conduct pertaining to elements or services that are subject to Section 251 and 252. Qwest Comments at p. 23. Requiring public disclosure of settlement agreements would deter parties from settling their disputes. Id. This would also lead to the imposition of solutions that may be inferior to those that the parties could have worked out on their own. Id. As examples of agreements falling within this third category, Qwest cites to a McLeod agreement which settled a dispute over reciprocal compensation and an agreement with Eschelon which settled a dispute over switched access. Qwest Comments at pps. 24-25.

The third category relates to agreements on matters outside the scope of Sections 251 and 252. Qwest claims these agreements have nothing to do with Section 251, do not contain terms of network elements, interconnection, or service as defined by FCC rules, and do not implicate Section 252 at all. Here Qwest includes a host of services: interstate matters within the FCC's traditional, pre-1996 jurisdictional domain, such as interstate access services, local retail services, intrastate long distance service, network elements that the FCC has concluded do not qualify for unbundling under the necessary and impair standards of Section 251(d)(2). As an example, Qwest cites to an agreement with Eschelon for consulting and network-related services wherein Eschelon is providing bona fide services of considerable value to Qwest. Qwest Comments at p. 26. It also cites to an Eschelon Agreement in which Qwest agreed to pay Eschelon $2 per line per month for Qwest's intraLATA toll traffic terminating to customers served by an Eschelon switch, subjtect to true up, until Eschelon and Qwest resolved the issue. Qwest also cites to an agreement with Covad which Qwest claims it sought to clarify Covad's expectations regarding Qwest's service levels and measures Qwest would use when reporting its service performance to Covad. Qwest Comments at p. 28.

Qwest urges that section 252(a)(1) of the Act "requires that a line be drawn between negotiated contractual provisions that are, and are not, subject to filing and approval requirements." Qwest Comments at p. 6. Qwest reasons that a balancing of interests is required when interpreting the Congressional intent behind section 252(a)(1). On one hand the Act itself is meant to be "both pro-competitive and deregulatory." Id. at p. 7. On the other hand, states Qwest, the Act intends for

regulators to have a residual role "to review and approve certain CLEC-ILEC contract matters." Id. When review is required then negotiated terms are available to CLECs under Section 252(i). Id. Qwest asks where the line is to be drawn in consideration of both the statutory language and the competing public interest and Congressional intentions.

Qwest also believes that different line drawing standards apply to negotiated agreements than to the Statement of Generally Available Terms and Conditions("SGAT") and agreements derived through arbitration. Because the Act provides 90 day, 60 day, and 30 day review periods for negotiated, SGAT, and arbitrated agreements, respectively and because the Act spells out differing substantive standards for the terms and conditions that must be in each type of agreement, Qwest concludes there is no precedential value in considering what terms and conditions must be in each type of agreement to determine what negotiated agreements must be filed. Id. at p. 8.

Qwest believes that the phrase "detailed schedule of itemized charges" found in section 252(a)(1) "is the touchstone" of the review process and provides guidance on where the line should be drawn. Id. Qwest argues that if Congress had intended the scope of review to extend beyond those agreements containing "a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement," it would have said so. Qwest interprets this language to be an intended constraint on the scope of agreements subject to review. Qwest reasons that the "obstacle of a mandatory 90-day prior approval process" applies only to "the most significant aspects of a voluntary agreement: the rates and associated service descriptions for interconnection, services and network elements." Id. at p. 9. Qwest believes the longer review process allowed for negotiated agreements indicates that Congress intended only what it terms the most significant aspects of the agreements to be reviewed. In summary, to give effect to the structure and intent of the 1996 Act, only the most significant aspects of an ILEC-CLEC relationship, "a detailed schedule of itemized charges" and associated service descriptions, must be filed and approved in advance. But other aspects of the contractual relationship can take effect without regulations. Qwest Comments at p. 11.

Qwest argues that a broad reading of the filing requirement of the Act will restrict competition. Qwest Comments at p. 13. First, Qwest argues that while filing "provides an opportunity for the Commission to evaluate the contractual arrangement in advance for discrimination and related public interest problems . .Regulators retain the right to review [agreements other than those containing itemized schedules] on their own motion or under complaints, after the fact. Id. Second, Qwest argues that it is not trying to limit "pick and choose" rights of the CLECs. Qwest believes that the same logic it applies to where to "draw the line" applies to what terms are included in section 252(i)'s pick and choose requirement and concludes that only "insofar as an ILEC and CLEC negotiate a schedule of charges, those rates must be made available to others under Section 252(i)." Id. at p. 14. In short, Qwest interprets the Act as requiring that it file for review only those agreements containing a schedule of charges and that the Act only requires that it make the same schedule of charges available to other CLECs.

An overbroad reading of Section 252 would mean that ILECs and CLECs would, for all practical purposes, have to file all agreements between them. Such an approach, if it carried the day, would have unintended and harmful consequences, and be contrary to the public interest. Qwest stated that if every detail of every business interaction between ILECs and CLECs must be

overseen in detail by regulatory authorities, there is little chance that the parties would tailor the details of their business to business relationship to their actual businesses or attempt to find innovative solutions to business problems. The intimate involvement of regulators that would be engendered by an overbroad reading of Section 252 would inhibit the development of collaborative arrangements between ILECs and CLECs who, by necessity, must collaborate on certain issues even as they compete for retail customers, and it would also interpose delays in the process of forming and implementing those deals.

Qwest also submits that clarification of the standard by the FCC is warranted, and that Qwest has filed a declaratory relief petition seeking such guidance. Qwest Comments at p. 4. Qwest states that there is no national standard for determining what agreements are subject to the 90 day preapproval requirement under Section 252. Qwest suggests that the Commission defer a decision on this matter until the FCC issues its decision. Staying the action will permit the Commission and other States to apply a consistent standard.

B. Position of AT&T;Time Warner and RUCO

AT&T relies upon the express language of the Federal Act itself for its interpretation of what must be filed. 47 U.S.C. Section 252(e) requires that "*[a]ny* interconnection agreement adopted ... be submitted for approval to the State Commission." (Emphasis added). AT&T comments that Qwest has mistakenly substituted the word "*some*" for the word "*any*" and thus erroneously concludes that some interconnection agreements are required to be filed, and some are not. AT&T believes all that needs to be asked in determining whether an agreement falls within the scope of the filing requirement is: "Has Qwest entered into an agreement with a telecommunications carrier for interconnection, services or network elements?" Id.

AT&T gleans several principles from its reading of Section 252 of the Act:

1. Parties can negotiate freely for interconnection, services and network elements. If they cannot agree, the State commission will enforce the provisions of the Act.

2. Negotiated agreements, arbitrated agreements and SGATs must be approved by the State commission.

3. Negotiated agreements and arbitrated agreements, or any portion thereof, may not discriminate against a carrier not a party to the agreement. For negotiated agreements, this requirement is contained in section 252(e)(2)(i).

4. A State commission may establish or enforce other State law requirements.

5. Another requesting carrier is entitled to the same terms and conditions contained in an approved agreement, or any individual arrangement contained in the approved agreement.

Id. AT&T points out that if agreements for interconnection, services or unbundled elements are not filed, the Commission cannot review them for discrimination and from, a public interest perspective and the CLECs cannot exercise their option to "pick and choose" under Section 252(i). Id.

AT&T opines that only through a broad interpretation of the filing requirement can competition be introduced and maintained. Id. at 6. Without review of a broad scope of agreements, "ILECs would be free to discriminate between the new entrants, negotiating with whomever they choose, and more importantly, *refusing* to negotiate with whomever they choose." Id. Emphasis in original. AT&T cites to the FCC's Local Competition Order to support its argument that the filing requirement must be interpreted as being broad enough to apply to all categories of interconnection agreements:

> We conclude that the 1996 Act requires all interconnection agreements, 'including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996,' to be submitted to the state commission for approval pursuant to section 252(e). *The 1996 Act does not exempt certain categories of agreements from this requirement.* When Congress sought to exclude preexisting contracts from provisions of the new law, it did so expressly.

AT&T Comments at p. 7. citing Local Competition Order at ¶ 65 (Emphasis AT&T's). AT&T concludes, based on this language, that Qwest must provide an express statutory exclusion to the extent it excludes any "agreement relating to interconnection prices, terms, or conditions from filing." Id. at p. 7.

AT&T terms Qwest's interpretation of Section 252(a)(1) as requiring only an agreement containing a "detailed schedule of itemized charges," needing to be filed as "strained" and urges the Commission to reject it. Id. at p. 12. AT&T argues that the bulk of an interconnection agreement is not dedicated to prices but to painstakingly negotiated terms and conditions. Id. at p. 10. AT&T finds it troubling that Qwest's analysis leads to the conclusion that a competitor must "ask Qwest to see the 'non-rate matters' and obtain the 'same or similar arrangements' and that if Qwest disagrees, the carrier has to arbitrate. Id. at p. 11. AT&T considers this a direct contradiction of section 252(i)'s requirement that other carriers have available the same terms and conditions as those in the agreement because competitors are forced to arbitrate for terms that are required to be available to them. Id. at 11-12.

AT&T disagrees with Qwest's assertion that matters not subject to Section 251 do not require filing. AT&T provides the example of an agreement setting out the terms of the escalation process before litigation. AT&T asks why one carrier should have to "jump through one more hoop" than another when proceeding toward litigation. AT&T also points out that in some cases that additional hoop may be a welcome one – such as a meeting with Mr. Nacchio, CEO at Qwest. Id. at 13. AT&T finds this process potentially discriminatory, and states that "if it concerns interconnection, services or network elements, it falls within the scope of Section 252. Id.

AT&T opines that litigation settlements should also be filed if they concern interconnection, services, or network elements. Id. AT&T provides as an example a dispute resulting in an agreement providing a $16.00 credit per line "on UNE-P every time the Daily Usage Files ("DUF")

are inaccurate, preventing the CLEC from billing other carriers for switched access." Id. at pp. 13-14. Such an agreement is discriminatory, states AT&T, if all carriers do not have the opportunity of receiving the same credit for the same occurrence. Id. at p. 14.

AT&T takes exception to Qwest's exclusion of services as well. Id. AT&T offers as a hypothetical that if Qwest were to agree to a carriers request that it provide voice messaging other carriers have the right under the section to opt-in to the same agreement and that the agreement must be filed with the State commission for approval. Id.. AT&T concludes that each classification Qwest has proposed for exclusion from the filing requirement has the potential to result in discrimination against a carrier in the provision of interconnection, services, and network elements. See Id. at p. 15.

AT&T points out that Sections 251 and 252 of the Act were included to require the incumbents to negotiate with competitors because the incumbents refused to do so before the Act. See Id. at p. 16. AT&T finds Qwest's argument that enforcement of sections of the Act designed to require negotiation will somehow stymie negotiation to be "ludicrous." Id.

AT&T finds the administrative burdens and costs of compliance caused by filing under Section 252 to be slight compared to the damage to competition and consumers which will be incurred if Qwest is "allowed to deal in a free-wheeling manner with its new competitors, and wield its considerable market power without restraint." Id. at p. 17. Only a broad reading of Sections 251 and 252 will provide an incentive for Qwest to negotiate with carriers in a non-discriminatory manner – an incentive Qwest otherwise lacks, says AT&T. See Id. at p. 18.

Time Warner filed very limited comments specific to the issue of price discounts. Time Warner stated that broad price discounts for extended periods of time on services which include unbundled elements, collocation, interconnection or resale should be offered to all CLECs. Time Warner states that failure to do so violates the anti-discrimination provisions of the 1996 Act. Time Warner at p. 1.

RUCO commented that Section 252 governs the Agreements, notwithstanding Qwest's arguments to the contrary. RUCO Comments at p. 1. According to RUCO, Qwest appears to be giving certain CLECs preferential treatment, in exchange for not opposing various applications submitted by Qwest before the Commission. RUCO Comments at p. 1. RUCO states that another example, found throughout many of the Agreements is a CLEC's promise to withdrawal from Qwest's Merger Docket with US West in exchange for some type of favorable treatment. RUCO Comments at p. 2. RUCO states that the parties agreed to keep the substance of the Agreements from the Commission unless permitted by the prior written consent of the other party. Id. RUCO states that Qwest was cutting secret deals with various CLECs to avoid their input into the Merger and 271 Dockets. RUCO states that other Dockets may be involved, and that the Commission should fully investigate them. Id. Further, RUCO argues that if the agreements are collusive or favor certain CLECs, they further undercut Qwest's claim that granting section 271 authority at this time is in the public interest. RUCO Comments at p. 3.

C. Staff Discussion

The issue raised is what agreements are required to be filed under 47 U.S.C. Section 252(e) and whether the agreements under investigation by the Commission which were not filed, must be filed to comply with the provisions of the Federal Act. Or, as presented in Qwest's filing, are certain agreements (or portions or amendments to those agreements) exempt from the provisions of Section 252(e) because they constitute: 1) confidential settlement agreements, 2) individualized business-to-business arrangements or 3) contracts which address subjects that fall outside the scope of Sections 251 and 252 of the Federal Act. Qwest's reading of the Federal Act which construes its filing obligations very narrowly to exclude the three types of agreements mentioned above, should be rejected by this Commission for the reasons discussed in detail below .

To determine what negotiated agreements Congress and the FCC intended to be within the scope of the filing requirement, Sections 251 and 252 must be read as a whole. The statutory language and the FCC's Local Competition Order, both support, in Staff's view, a broad interpretation of what must be filed for approval with the State commission pursuant to Section 252(e). For instance, Section 252(a)(1) broadly refers to requests for "interconnection, services, or network elements pursuant to section 251".

The related discussion in the FCC's Local Competition Order, while focusing on the need to file preexisting agreements, is nonetheless indicative of a very expansive interpretation of the agreements which are subject to the 252(e) filing requirement. The FCC stated at para. 167 of its Local Competition Order:

> As a matter policy, moreover, we believe that requiring filing of all interconnection agreements best promotes Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms. State commissions should have the opportunity to review all agreements, including those that were negotiated before the new law was enacted, to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest. In particular, preexisting agreements may include provisions that violate or are inconsistent with the procompetitive goals of the 1996 Act, and states may elect to reject such agreements under section 252(e)(2)(A). Requiring all contracts to be filed also limits an incumbent LEC's ability to discriminate among carriers, for at least two reasons. First, requiring public filing of agreements enables carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others. Second, any interconnection, service or network element provided under an agreement approved by the state commission under Section 252 must be made available to any other requesting telecommunications carrier upon the same terms and conditions, in accordance with Section 252(i).

The FCC also stated at para. 168: [c]onversely, excluding certain agreements from public disclosure could have anticompetitive consequences." The FCC went so far as to require agreements between neighboring noncompeting LECs to be filed with the State commission for

approval. Local Competition Order at para. 168. This indicates a very expansive reading of the agreements subject to Section 252(e) by the FCC.

Given the above, Staff believes that if there is any ambiguity in the Federal Act on this point, it must be construed in favor of a broad interpretation of the filing requirement also. It is clear that uppermost in Congress' mind as interpreted by the FCC in enacting the filing scheme set forth in Section 252 was the need to prevent discrimination by the ILEC in its dealings with the various CLECs in any given State.

Given the language of Sections 251 and 252 as a whole, and the FCC's broad interpretation of agreements subject to the filing requirement, Staff believes that the term "interconnection agreement" as used in Section 252(e) must be defined broadly to include any contractual agreement or amendment which relates to or affects interconnection, services or network elements between an ILEC and another carrier in Arizona.

The terms Congress chose to include in Section 252(a)(1) indicate the types of provisions Congress believed to be most important to the promotion of competition. Congress chose to include interconnection, service, and network elements as those provisions an incumbent must provide to all competitors on an equal basis, because it believed those elements to be essential to true competition. Staff concludes then that if Qwest enters into a negotiated agreement with a competitor that has any affect on its provision of interconnection, services, or network elements, it is to file said agreement with the State commission for approval.

From a policy perspective, in order for competition to develop, it is important to promote a general overall policy of disclosure, rather than nondisclosure. Only if the transactions Qwest enters into with its various competitors are transparent to all parties, can the overarching nondiscrimination goal of the 1996 Act be realized. As one of the parties pointed out, the administrative burdens and costs of compliance caused by filing under Section 252 are slight compared to the damage to competition and consumers which will occur if Qwest is allowed to shroud certain of its dealings in secrecy.

Qwest relies upon Section 252(a)(1) to urge a very narrow construction of the statute, which allows requesting telecommunication carriers and the incumbents to enter into interconnection agreements without regard to the filing requirements of Section 252(e) unless the agreement "includes a detailed schedule of itemized charges for interconnection." Staff believes Qwest's interpretation of Section 252(a)(1) is strained at best and that a more reasonable interpretation of the statute is that the term "detailed schedule" does not define what agreements must be filed, but rather instructs what the agreement to be filed is to at a minimum contain. To accept Qwest's interpretation would mean that Qwest could escape Section 252(e)'s mandate to file simply by not including such a detailed schedule in an agreement. In addition, this flies in the face of Qwest's own actions in the past, where this Commission has approved many interconnection agreement amendments which did not contain a "detailed schedule of itemized charges". Staff's view is that there are an almost infinite number of terms and conditions that are not contained in a schedule of charges that may prove to be discriminatory, and not in the public interest.

Further, it is not difficult to imagine an agreement having nothing to do with a schedule of charges, that creates terms that must be made available to other competitors under subsection (i). For instance, after entering into an interconnection agreement a dispute may arise concerning Qwest's performance under the agreement. In an effort to settle the matter and avoid litigation Qwest may agree to accept a reduced rate for past service and higher service standards for future service. The document would likely be entitled "settlement agreement" because it is designed to settle the dispute. While this agreement does not contain a schedule of charges and is not called an interconnection agreement, it clearly entitles the competitor to service at a certain standard for a certain price, and every other CLEC must have the opportunity to receive that same service at that same price. Qwest itself recognizes that "every time the parties modify a prior contract term, they have created a new contractual agreement." Petition for Declaratory Ruling of Qwest Communications International Inc., WC Docket No. 02-89 at pp. 3-4, April 23, 2002. It follows that if the parties have modified a prior term to an *interconnection agreement* a new *interconnection agreement* has been formed and must be filed under the statute. If the agreement is never filed, then other CLECs would never be aware of, and therefore be incapable of selecting or rejecting like terms.

Staff also urges the Commission to reject Qwest's position that certain classes of agreements, settlement agreements, business-to-business arrangements and agreements which may also contain terms and conditions outside the scope of Section 251 and 252 are exempted. Staff is mindful of Qwest's arguments regarding the need to encourage and promote the resolution of disputes through settlement agreements. Staff also understands the need and desire to negotiate individualized business-to-business arrangements at times between the ILEC and CLEC and the desire to enter into agreements of this nature which contain more detailed provisions expanding upon the more general terms of an interconnection agreement between two parties. Staff notes that the very limited participation in this proceeding, provides some indication that the CLECs may favor settlement and individualized business-to-business arrangements where possible. Staff would encourage Qwest and the CLECs to continue to settle their disputes where possible, and does not believe that the requirement to file these agreements should act to discourage such agreements in the future. If filing of the agreements discourages settlement in the future, then Staff believes that this policy objective must give way to the nondiscrimination provisions of the Act. It is important in Staff's view that where these types of agreements change, alter or add to the underlying terms of a filed interconnection agreement, and in particular where they produce more favorable terms than what is on file, they must be made available for other carriers under Section 252(i).

It is clear, for instance, through Qwest's own description of what it includes within the terms and conditions of business-to-business arrangements, i.e. dispute resolution, escalation procedures, account team support, and the mechanics of provisioning and billing for ordered interconnection services, that giving favored treatment to one carrier while denying it to another, is the very type of discrimination that the Act attempts to prevent. Without the level of transparency achieved through public filing of these agreements, it would be impossible to ensure that the provisions of the Act were being carried out in a nondiscriminatory manner, an important prerequisite to the development of competition in Arizona.

Staff also rejects Qwest's arguments that the different time periods contained in Subsection 252(e)(4) for approval of the agreements indicates Congress intended a narrow scope of review for

negotiated agreements. Staff believes it is more reasonable to conclude that the longer review time provided indicates that Congress intended that the State commissions have sufficient time to review the agreements, since they had not been subject to review in an arbitration proceeding or SGAT review proceeding. It is important to note that the SGAT has been thoroughly reviewed in the Section 271 process and that arbitrated agreements have had their terms reviewed by a neutral arbitrator. In other words, the terms of SGAT and arbitrated agreements have already been subject to intense scrutiny. Privately negotiated agreements have not and the Act therefore provides State commissions with the opportunity and the time necessary to determine their affect on competition.

Staff believes Qwest's argument regarding the impact upon competition fails to recognize the obvious. The Commission cannot determine the nature of, and CLECs cannot pick and choose terms, that are kept secret. Qwest states that if a CLEC is denied a like term they request, the CLEC can arbitrate to get it. The obvious question is, if the agreement is secret how will the CLEC realize the term is available and request it in the first place? Qwest says that if an agreement turns out to be discriminatory the Commission can address it after the fact. The obvious question is, if the discriminatory agreement is secret, how will the Commission ever know to address it? Qwest has provided no answers to the conundrums it creates with its position. In addition, another obvious question remains unanswered, why must one carrier be forced to undergo a lengthy and costly arbitration proceeding when another carrier has been able to simply obtain the concession through negotiation. Staff believes that this is exactly the type of discrimination that the Act seeks to prevent.

In summary, the language of Section 252(a)(1) must control the scope of agreements that are required to be filed with the State commission for review and approval and that Section provides that if it concerns interconnection, services or network elements, it falls within the scope of the agreements subject to Section 252.

It appears to Staff that Qwest acted based upon a good faith interpretation of the underlying statutes. Nonetheless, we agree with RUCO that provisions in agreements which give favored treatment in exchange for a party's agreement not to participate in proceedings before this Commission, are of extreme concern to the Commission and are detrimental to the public interest. Contracts of this nature must be given a higher degree of scrutiny and appropriate remedies fashioned to prevent this type of conduct from occurring in the future.

The recommendations set out below are appropriate to respond to the concerns raised by AT&T, RUCO and Time Warner. Since there are no material facts in dispute, Staff does not believe that an evidentiary hearing is necessary. Qwest, and the other parties, however, should have the opportunity to request a hearing relative to the level of the fines proposed. In addition, in response to RUCO's concerns regarding any adverse impact upon the record in the Section 271 proceeding, Staff intends to seek comment on this issue in the very near future in the Section 271 case. The impact upon the record in the 271 proceeding is specific to that Docket and should be handled within the context of that case, rather than in this Docket.

D. Staff Findings

1. Agreements Which Must Be Filed and Approved by the Commission

Qwest submitted approximately 100 agreements which had not been filed with the Commission for approval. Based upon the above discussion, Staff believes that of the approximately 100 agreements filed by Qwest, the following 25 agreements are "interconnection agreements" as that term is used in Section 252(e) of the Federal Act and consequently should have been filed with the Commission for approval:

1) US WEST Service Level Agreement with Covad Communications Company, Unbundled Loop Services dated April 28, 2000
2) Confidential Billing Settlement Agreement between USWC and McLeodUSA dated April 28, 2000
3) Confidential Billing Settlement Agreement between Qwest and Time Warner Telecom dated March 14, 2001
4) Confidential Trade Secret Stipulation Between ATI and US WEST, USWC and Eschelon (fka ATI) dated February 28, 2000
5) Confidential Amendment to Confidential/Trade Secret Stipulation between USWC and Eschelon dated November 15, 2000
6) Settlement Agreement between Qwest and Eschelon dated March 1, 2002
7) Confidential Billing Settlement Agreement between USWC and Nextlink dated 5/12/00
8) Confidential Billing Settlement Agreement between Qwest and Allegiance dated dated 12/24/01
9) Facility Decommissioning Reimbursement Agreement between Qwest and AT&T dated 12/27/01
10) Qwest Communications Corporation Private Line Services Agreement between Qwest and Covad entered into in January 1999
11) Confidential Billing Settlement Agreement and Release between USWC and ELI dated 12/30/99
12) Amendment Number One to Confidential Settlement Agreement and Release between USWC and ELI dated 12/30/99
13) Amendment No. Two to Confidential Settlement Agreement and Release between Qwest and ELI dated 4/30/01
14) Confidential Billing Settlement Agreement and Release between USWC and ELI dated 12/30/99
15) Confidential Billing Settlement Agreement between Qwest and Eschelon dated 11/15/00
16) Settlement Agreement and Release between Qwest and Global Crossing dated 9/18/00
17) Facility Decommissioning Agreement between Qwest and Integra Telecom dated 11/20/00
18) Amendment to Confidential Billing Settlement Agreement between Qwest and McLeodUSA dated 10/26/00.
19) Confidential Agreement to Provide Directory Assistance Database Entry Services between Qwest and McLeodUSA dated 2/12/01

20) Confidential Billing Settlement Agreement Qwest and McLeodUSA dated 9/29/00
21) Facility Decommissioning Agreement between Qwest and SBC dated 10/5/01
22) Confidential Settlement Agreement between Qwest and Scindo dated 8/1001
23) Confidential Billing Settlement Agreement and Release between USWC and Teleport Communications Group dba AT&T Local Services dated 3/13/00
24) Facility Decommissioning agreement between Qwest and Williams Local Network dated 10/2/01
25) Amendment to the Interconnection Agreement (UNE-P non-recurring charges amendment) between Qwest and Eschelon dated 7/31/01

Staff recommends that Qwest be required to immediately file these agreements with the Commission for approval pursuant to 252(e) of the Federal Act.

Qwest has committed, pending the FCC's consideration of Qwest's Petition, to "over-file", that is to file and seek approval of every agreement with a CLEC that even arguably falls within the broadest standard that any party has suggested. Qwest Reply at p. 2. Nonetheless, the Staff recognizes that in isolated situations in the future, there may also arise a legitimate question as to whether a particular agreement must be filed pursuant to Section 252(e) of the Federal Act. In these limited instances, Staff believes that a process should be available for Qwest to file the agreement under seal for a Commission determination as to whether the agreement qualifies as an interconnection agreement and hence is covered by the filing requirements of Section 252(e).

2. <u>Assessment of Fines</u>

The Commission has the power to penalize violators of its rules and regulations and orders through Article 15 of the Arizona Constitution and by statute, A.R.S. Section 40-424.

Article 15, Section 19 of the Arizona Constitution provides as follows:

> The Corporation Commission shall have the power and authority to enforce its rules, regulations, and orders by the imposition of such fines as it may deem just, within the limitations prescribed in Section 16 of this Article.

Article 15, Section 16 of the Arizona Constitution provides that:

> If any public service corporation shall violate any of the rules, regulations, orders, or decisions of the Corporation Commission, such corporation shall forfeit and pay to the State not less than one hundred nor more than five thousand dollars for each such violation, to be recovered before any court of competent jurisdiction.

There is also statutory authority for the fining power of the Commission contained in A.R.S. Section 40-424:

> A. If any corporation or person fails to observe or comply with any order, rule, or requirement of the commission or any commissioner, the corporation or person shall be in contempt of the commission and shall, after notice and hearing before the commission, be fined by the commission in an amount not less than one hundred nor more than five thousand dollars, which shall be recovered as penalties.

While Staff believes that filing of the agreements for approval with the Commission will cure any future discrimination problems, fines should be assessed against Qwest for its failure to file the above agreements with the Commission for approval, since failure to do so prevented other CLECs from obtaining the benefit of these agreements through the "opt-in" provisions of the Federal Act. Because Staff cannot rule out the possibility that Qwest's failure to file the agreements was due to good faith differences of interpretation, Staff is recommending relatively nominal fines be assessed against Qwest for each agreement not filed. For each of the agreements not filed with the Commission for approval, Staff recommends that Qwest be fined $3,000.00 per agreement. Twenty-three agreements fall into Category 1 for a total fine of $69,000.00. If this situation arises in the future, Qwest should be fined the maximum amount permitted by law on a per day basis for contempt of a Commission Order.

Furthermore, because of the more egregious nature of the infraction, Staff recommends that Qwest be fined, absent contempt, $5,000 per agreement for each of the agreements that contained clauses **prohibiting** the carrier or CLEC from participating in a state regulatory proceeding. Seven agreements fall into Category 2 for a total fine of $35,000.00. The Commission should put Qwest on notice that this type of conduct will not be tolerated in the future and that if it should occur again, Qwest should be fined the maximum amount permitted by law on a per day basis for contempt of a Commission Order, in addition to any other remedial actions which may be appropriate. Following are the seven agreements:

1) Confidential Agreement between Qwest and Eschelon dated November 15, 2000
2) Confidential Billing Settlement Agreement (XO subs) Qwest and XO (fka Nextlink) dated December 31, 2001
3) Letter Regarding Proposed Settlement Terms between USWC and SBC dated June 1, 2000
4) Agreement Between AT&T, US WEST and Qwest and AT&T dated April 24, 2000
5) Confidential Settlement Document between USWC and McLeodUSA dated April 25, 2000
6) US WEST Service Level Agreement with Covad Communications Company, Unbundled Loop Services, dated April 28, 2000
7) Confidential Billing Settlement Agreement Between USWC and McLeodUSA dated April 28, 2000

Must be filed

Staff recommends that the Commission impose the above fines and allow Qwest, or any other party, an opportunity to request a hearing on the level of the fines assessed, if they so desire. The Commission may also want to consider the imposition of other non-financial remedies.

E. Staff Recommendations[4]

Staff recommends the following:

1. That Qwest be required to immediately file for Commission approval pursuant to Section 252(e) of the Federal Act, the thirty-eight agreements identified above. Those agreements will become public agreements upon filing by Qwest and once approved by the Commission will become available for opt-in by other carriers pursuant to Section 252(i) of the Federal Act;

2. That fines be imposed upon Qwest at the rate of $3000.00 per agreement for any agreement listed above that should have been filed for approval with the Commission under Section 252(e) of the Federal Act;

3. That fines be imposed upon Qwest at the rate of $5,000.00 per agreement for the agreements listed above which contained a provision prohibiting the carrier or CLEC from participation in a regulatory proceeding before the Arizona Commission;

4. That Qwest be required to file quarterly compliance filings until otherwise ordered by the Commission which set forth all agreements entered into with other carriers during that time period, and a list of the agreements that were filed with the Commission for approval.

[4] These recommendations should also apply to agreements subsequently submitted by CLECs (in response to Staff data requests) which Qwest may not have filed and which Staff determines should have been filed by Qwest under Section 252(e).

V. Conclusion

Staff believes that Qwest's interpretation of the agreements encompassed by Section 252(e) of the Federal Act is too narrow and resulted in certain agreements not being filed with the Commission for approval under Section 252(e) of the Act. Staff recommends that Qwest be required to immediately file the above listed agreements with the Commission and that penalties be imposed upon Qwest in the amount of $104,000.00 for its noncompliance, subject to Qwest or another party's request on the level of fines proposed since the harm resulting from nonfiling cannot be sufficiently quantified.

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