BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A.MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

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

The Staff of the Arizona Corporation Commission ("Staff") hereby files its Supplemental Report and Recommendation in accordance with the Commissioner's Procedural Order dated July 9, 2002, in the above-referenced matter.

RESPECTFULLY SUBMITTED this 14th day of August, 2002.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF QWEST CORPORATION'S COMPLIANCE WITH SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996	)	Docket No. RT-00000F-02-0271

SUPPLEMENTAL STAFF REPORT AND RECOMMENDATION

August 14, 2002

I. Introduction

The purpose of this Supplemental Report and Recommendation is to summarize the responses received to Staff's recent data requests in the 252(e) proceeding and present Staff's analysis and recommendations for further proceedings regarding 252(e). Staff will address the responses received to its recent data requests in the 271 proceeding in a separate report to be filed at a later date.

II. Background

The investigation into Qwest's compliance with Section 252(e) of the 1996 Telecommunications Act ("1996 Act") was commenced by Procedural Order dated April 18, 2002. [1] Pursuant to the Procedural Order, Qwest was required to file a series of settlement agreements and business to business arrangements between itself and other carriers in this Docket for review due to allegations raised in a complaint proceeding in Minnesota that Qwest was not complying with Section 252(e) of the 1996 Act.

All parties were given an opportunity to review the underlying agreements and to file comments on the agreements and whether they fell within the filing obligations of telecommunications carriers under Section 252 of the 1996 Act. Comments were filed by Qwest, AT&T Communications of the Mountain States, Inc. ("AT&T") and TCG Phoenix ("TCG"), Time Warner Telecom of Arizona ("Time Warner') and the Residential Utility Consumer Office ("RUCO"). On June 7, 2002, the Arizona Corporation Commission ("ACC") Staff filed its Report and Recommendation on the issues raised. Staff's original findings and conclusions were based upon its review of the written contracts in its possession at the time and the comments that were filed by Qwest, AT&T, Time Warner and RUCO.

In most cases, the agreements that were not filed were labeled as billing settlement agreements which as their name suggests, attempted to settle disputes with certain carriers, or, letter agreements which contained individualized business to business arrangements with the carrier involved. There were also several collocation decommissioning agreements. In its original Report and Recommendation issued on June 7, 2002, Staff concluded that a broad interpretation of the term "interconnection agreement" as used in the 1996 Act was required in order to carry out the nondiscrimination provisions of the Act. Accordingly where a billing settlement agreement or letter agreement between Qwest and another carrier affected the terms of their original interconnection agreement in any way, Staff recommended that those agreements should be treated as "interconnection agreements" subject to Section 252(e)'s filing requirement.[2] Staff identified 25 agreements which contained terms and conditions relating to

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[1] AT&T Communications of the Mountain States, Inc. ("AT&T") and TCG Phoenix ("TCG") filed a Motion in the Section 271 proceeding to reopen the record to determine whether Qwest had violated provisions of the 1996 Act in not filing certain agreements with the Commission for approval. A separate proceeding was commenced on Qwest's compliance with Section 252(e) at the request of Staff.

[2] On May 23, 2002, Qwest 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). It is anticipated that the FCC will rule on Qwest's Petition which should provide guidance on the issues of whether billing settlement

interconnection, wholesale services and network elements which Staff, therefore, believed were subject to Section 252(e)'s filing requirement. AT&T identified a total of 14 agreements which it believed qualified as interconnection agreements.

A Procedural Conference was held on June 19, 2002, to address a variety of issues including: 1) whether there were any material issues of fact, 2) whether additional discovery was required, 3) what the appropriate procedure was going forward, and 4) whether there should be a hearing, and if so what the scope of the hearing should be. As a result of the Procedural Conference, Staff issued further discovery in both the 252(e) and 271 proceedings. In the 252(e) proceeding, Staff asked for, inter alia, copies of any unfiled oral or written agreements with Qwest that affected the terms, conditions and rates for interconnection, wholesale services and unbundled network elements. Staff also sent similar data requests to Qwest. In the 271 proceeding, Staff asked whether any carrier believed it had been precluded from participating in that Docket as a result of any agreement with Qwest and whether the record was tainted as a result. Staff also sent data requests to its Test Administrator and Test Transaction Generator for their input on this issue with regard to the OSS test.

III. Executive Summary

Part IV of this Memo discusses the additional discovery done by Staff since the June 19, 2002, Procedural Conference. The data responses indicate that of the 48 CLEC respondents, 5 believed that they may have unfiled interconnection agreements with Qwest. The five carriers included Cox, WorldCom, ELI, Allegiance and Eschelon. Four of these respondents, Cox, ELI, Allegiance and WorldCom, each indicated that they had entered into a recent amendment to their interconnection agreements with Qwest which had not yet been filed. None of the other CLECs believed that they had any unfiled interconnection agreements with Qwest, despite the fact that Staff had identified agreements between Qwest and other carriers as affecting interconnection, wholesale services and unbundled network elements. The CLEC respondents were split on the issue of whether they shared responsibility with Qwest under the Federal Act and State law to file interconnection agreements with the State commissions for approval.

The significant additional discovery has escalated concerns regarding the business to business relationship between Qwest and Eschelon, and to a lesser degree Qwest and McLeod. While the filings in this Docket raise questions and concerns as to the conduct of all three parties, of particular concern is Qwest's handling of the 271 proceeding, and its reasons for not filing certain agreements entered into with these two carriers with the Commission for approval.

Part V of this Memo contains a discussion of Staff's revised list of agreements which it believes fall under the filing obligations of Section 252(e) of the 1996 Act. The revised list of agreements is attached to the Report as Exhibit G.

Part VI of this Memo discusses Staff's recommendation for further proceedings in the 252(e) case. Because the issues raised in this Docket are interrelated to some degree with the 271 proceeding, Part VI of this Memo also addresses whether consolidation of the 271 docket is

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agreements and letter agreements which contain terms and conditions relating to interconnection, wholesale services and/or network elements are encompassed within 252(e)'s filing requirements.

appropriate. Part VI of this Memo also addresses a process for resolving issues relating to individual carrier opt-in rights and allegations that Qwest interfered with the 271 regulatory process before the Commission.

IV. Summary of Staff Discovery and Analysis

The data requests were sent to the 80 carriers including CLECs certificated to do business in Arizona, as well as to the parties to this proceeding and the 271 proceeding. See Exhibit A. A copy of the specific data requests sent by Staff to the CLECs in this docket are contained in Exhibit B to this report. Responses and follow up telephone calls show that 19 carriers to whom data requests were sent have gone out of business, been acquired by other data request addressees, or withdrawn their application for a CC&N leaving a balance of 61 operating companies which could respond. To date, Staff has received responses from 48 CLECs, an approximate 80% response rate. Staff has attempted to contact the 13 carriers which did not respond, to determine whether they are still in business. Staff's data requests to Qwest in this Docket and Qwest's responses are contained in Exhibit C.

Staff's first set of data requests to the CLECs asked whether the carrier was aware of any unfiled interconnection agreements between it and Qwest, and to provide copies of any such agreements. The carriers were also asked if there was any agreement that modified or amended the terms, conditions or rates of an interconnection agreement. Staff's second set of data requests to the CLECs inquired about whether the carrier had any oral agreements with Qwest that qualified as interconnection agreements or precluded participation in any Commission proceeding.

Of the 48 respondents, five, including Eschelon, ELI, Allegiance, WorldCom and Cox, acknowledged that there may be unfiled interconnection agreements with Qwest which should have been filed. As indicated above, of these five, ELI, Cox, Allegiance and WorldCom stated that they each had one amendment that had not been filed yet because it had just recently been executed.

In most cases, the agreements that were not filed were labeled as billing settlement agreements which as their name suggests, attempted to settle disputes with certain carriers, or, letter agreements which contained individualized business to business arrangements with the carrier involved. There were also several collocation decommissioning agreements. According to the responses, Eschelon, McLeod, WorldCom and ELI had the largest number of unfiled settlement agreements and letter agreements. Eschelon had a total of 17 unfiled billing settlement agreements, letter agreements and/or interconnection agreements. McLeod had 14 billing settlement agreements/letter agreements. WorldCom and its subsidiaries had 8 and ELI had 8 billing settlement agreements and/or letter agreements; and one recent amendment to its interconnection agreement.

Virtually all of the CLECs, even those with billing settlement agreements and letter agreements which Staff identified as "interconnection agreements", believed that all of their interconnection agreements had already been filed with the Commission for approval.[3] Several

[3] See Response of McLeod to Staff Data Requests. Exhibit D attached.

of the CLECs with unfiled billing settlement agreements and letter agreements expressly stated that they did not believe these agreements were interconnection agreements that had to be filed with the State commissions.[4] Several others stated that they did not believe that agreements which settled individualized disputes between two carriers had to be filed, even though they may impact arrangements for interconnection, wholesale service or unbundled network elements. They stated that only when the agreement settled a dispute that pertained to other industry members as well, did it have to be filed under Section 252(e) of the 1996 Act.[5] For instance, Covad stated that it did not believe that a facility decommissioning agreement had to be filed since it was carrier-specific.[6] In addition, one of the CLECs stated that it had filed anything that was labeled as an "interconnection agreement" or an "amendment to an interconnection agreement" and therefore believed that it had complied with its filing obligations in this regard.[7]

The data responses also revealed that two carriers had oral agreements with Qwest, Eschelon and McLeod. Qwest orally agreed with Eschelon that pricing levels for UNE-E would be competitive. In the case of McLeod, there was an oral agreement concerning additional product amounts to be purchased by Qwest under a written purchase agreement. With this agreement, there was also an oral agreement between Qwest and McLeod that McLeod would not oppose Qwest's 271 application as long as Qwest was in compliance with its agreements and all applicable statutes.

The CLEC respondents were split on the issue of whether they shared responsibility under the Federal Act or State rules for filing interconnection agreements with the State Commissions. Several indicated that they do not share a responsibility with Qwest to file the agreements with the State commission for approval because they do not possess sufficient information to know whether they should be filed or not.[8] These CLECs argue that only Qwest can determine when it is necessary to file an agreement because only Qwest possesses the superior knowledge to do so. They stated that in other words, Qwest knows when something is settling a CLEC specific complaint or whether the problem that is being settled is something on a broader scale that would require filing with the State commission.

Overall, Staff's additional discovery has allowed it to narrow the more serious issues down to Qwest's contracts and relationships with two carriers, Eschelon and McLeod. Eschelon and McLeod both offer a specialized type of service not offered by other carriers in Arizona and which Qwest does not yet make available as a standard product offering. The service is a form of UNE-P Centrex including additional AIN features and voicemail. Qwest stated that it did file with the Commission as required, amendments to its respective interconnection agreements with both carriers setting forth the terms and conditions for the specialized product offering. However, other settlement agreements and letter agreements between the two carriers and Qwest were not filed.

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[4] See Response of ELI to Staff Data Requests. Exhibit D attached.
[5] See Response of Eschelon to Staff Data Requests. Exhibit D attached.
[6] See Response of Covad to Staff Data Requests. Exhibit D attached.
[7] See Response of Covad to Staff Data Requests. Exhibit D attached.
[8] See Response of Eschelon to Staff Data Requests. Exhibit D attached.

The data responses also indicated that Qwest had both written and/or oral agreements with XO, Z-Tel (for 60 days only), Eschelon and McLeod wherein these CLECs agreed not to oppose Qwest's 271 application or participate in 271 proceedings.[9]

V. Agreements Subject to Section 252(e) Filing Obligations

In its original Staff Report and Recommendation issued on June 7, 2002, Staff identified 25 agreements that it believed should have been filed by Qwest pursuant to Section 252(e) of the 1996 Act. Staff indicated in its June 7, 2002, Report that its determination was based upon a broad interpretation of the provisions of the 1996 Act. In order to achieve the transparency of ILEC-CLEC dealings that Staff believes is necessary to carry out the nondiscrimination provisions of the Act, the term "interconnection agreement" as used in Section 252(e) must be defined broadly, in Staff's opinion, to include any contractual agreement or amendment which relates to or affects interconnection, wholesale services or network elements between an ILEC and another carrier in Arizona.

Since that time, in response to its data requests, Staff has received several additional unfiled agreements. The list of all unfiled agreements is contained on Exhibit F hereto. In addition, Staff has gone over its original list again and found that several of the original agreements on the list should be deleted. In at least one or two cases they were specific to another state and did not pertain to Arizona. Staff's revised list of Category 1 agreements that it believes should be filed pursuant to Section 252(e) is contained in Exhibit G.[10] Exhibit H contains a brief description of each of these agreements. Using Staff's revised list, the base fine amount for Category 1 agreements is $84,000.00;[11] and the base fine amount for Category 2[12] agreements is $45,000.00.[13]

VI. Scope of Further Proceedings

A. <u>Scope of Further Proceedings</u>

Pursuant to the Commission's most recent Procedural Order, parties have ten days to comment on Staff's Reports and Recommendations, and on its revised list of contracts subject to the 252(e) filing requirements. Parties are also to comment on what they believe the scope of any evidentiary proceeding in this Docket should be and whether the Section 271 proceeding should be consolidated with this case. Staff discusses its recommendations on these issues below and why it believes that the approach it has outlined is appropriate.

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[9] See responses of Z-Tel, Eschelon and McLeod to Staff data requests. Exhibit E attached.

[10] The revised list of Category 2 agreements is also contained at Exhibit G attached.

[11] Category 1 agreements are those which Staff has determined are "interconnection agreements" subject to the 252(e) filing requirement.

[12] Category 2 agreements are those agreements which contained a provision not to oppose Qwest in various regulatory proceedings before the Commission. As discussed earlier, Staff is recommending that Qwest be given a formal opportunity to rebut the CLEC claims of interference, for those agreements which involved the 271 process.

[13] As discussed later in this report, Staff believes that the parties in their comments and responses to Staff's data requests have made an initial showing that Qwest acted in contempt of Commission rules of process and orders in interfering with the 271 regulatory process and that additional fines over and above the base amount already agreed to by Qwest and non-monetary penalties are appropriate.

1. 252(e) Proceeding

a. Scope of Hearing

1. Fines and Related Issues

This proceeding was commenced to examine Qwest's compliance with Section 252(e) of the Federal Act which provides in relevant part as follows:

> (1) APPROVAL REQUIRED.—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.

Since then, parties have raised a myriad of other issues that are not related to Qwest's filing obligation under Section 252(e) of the Federal Act. Staff believes that further proceedings in the 252(e) case should be limited to the contracts that actually raise 252(e) issues.

As stated earlier, Staff agrees with the process outlined by AT&T, adopted by the Hearing Officer in the July 9, 2002 Procedural Order, where all parties will have 10 days to comment on Staff's revised list of "interconnection agreements". Based upon the comments submitted, Staff will review any additional agreements identified and determine whether its list should be revised to include them. Any disagreements which cannot be resolved regarding Staff's list could be considered in the hearing on the level of fines imposed.[14] In addition to disagreements of this nature, however, the scope of the 252(e) hearing should be limited to the issue of why Qwest did not file the agreements with the Commission for approval and additional fines if appropriate in some cases. The hearing would address additional fines since it is Staff's understanding that Qwest has agreed to Staff's base amount of fines for the Category 1 agreements, and is willing to waive its right to a hearing on the base amount of fines proposed by Staff. Staff believes that such a hearing should be held on an expedited basis, since parties will have had at least two months to do additional discovery by the time any ruling is issued.

Many of the additional 252(e) issues raised by RUCO at the Procedural Conference on June 19, 2002, have now been answered through additional discovery, or are more appropriately answered in a separate proceeding. RUCO's issues involved the existence of any oral agreements, the harm to competition and benefits to Qwest, terminated contracts, and a process for filing agreements on a going forward basis. In response to Staff data requests, Eschelon and McLeod reported that they each had oral agreements with Qwest. Assessment of the damages done to further competition as well as the benefit obtained by Qwest would be more appropriately examined in other proceedings, as discussed below. For instance, one of the benefits identified by RUCO was Qwest having obtained the benefit associated with

[14] Staff would expect all parties to act in good faith and review the individual agreements, identify legitimate differences in interpretation for discussion with Staff, and only if agreement could not be reached would the agreements be included in any 252(e) hearing.

nonparticipation by Eschelon in Qwest's 271 proceeding. Qwest has answered RUCO's fourth issue, i.e., what agreements were terminated. See Exhibit I. Finally, Staff in its original Report had already identified a process/procedure for use in the future by Qwest in identifying whether agreements should be filed or not, assuming a question arose. Staff proposed that a process be available for Qwest (and a CLEC) to file the agreement under seal for a Commission Staff determination as to whether the agreement qualifies as an interconnection agreement and hence is covered by the filing requirements of Section 252(e). Qwest has also committed to overfile agreements in the future to ensure that its 252(e) obligations are being fulfilled.

WorldCom's issues fall into one of the following three categories: 1) availability of the agreements for opt-in purposes, 2) the impact on the 271 process and the OSS test, and 3) whether Staff appropriately identified the agreements subject to the 252(e) filing obligations and whether the agreements were in fact discriminatory.

As discussed below, Staff believes that the availability of opt-in for any agreement should be determined at the time a carrier chooses to opt-in to the specific agreement and they are denied opt-in rights by Qwest. It would be difficult to make opt-in determinations, without knowing which carriers will attempt to exercise their opt-in rights and for which contracts. That determination should be made on a case by case basis at the time the agreements are publicly filed if a carrier chooses to opt-in to one of the agreements and is denied by Qwest. Opt-in may be appropriate in some cases, but not in others. It would be difficult to address this issue before a dispute arises which regard to the opt-in rights of a particular carrier.

WorldCom's second issue of whether the 271 case was adversely affected should be addressed in the context of the 271 proceeding. Staff will be addressing the issue of whether the 271 record was tainted as a result of the secret agreements in its 271 Report.

Finally, WorldCom's third issue is addressed by AT&T's suggestion which the Administrative Law Judge has already adopted to allow all parties to file comments on Staff's proposed list of "interconnection agreements". Such an approach will allow any disagreements to immediately come to light which Staff can then attempt to resolve with the parties.

2. Bifurcation of Non 252(e) Issues

a. Phase B to Address 252(i) Complaints On a Case by Case Basis, if Necessary

As already discussed, issues relating to a specific carrier's ability to opt-in to any of the unfiled agreements arise under Section 252(i) of the 1996 Act and should be addressed on a case by case basis as disputes arise. There is a separate body of law which governs these issues. Staff recommends a Phase B of this Docket be set up to address any complaints of carriers as a result of Qwest denying them opt-in rights for specific contracts. The complaints could be addressed on a case by case basis as they arose.

A good example of how opt-in rights may vary among carriers are the collocation decommissioning agreements that Staff has requested Qwest to publicly file. Covad noted in its

response to Staff data requests that its decommissioning agreement is specific to its own collocation arrangements and its costs associated with decommissioning are probably going to be much different than another carriers. See Exhibit D. The FCC has stated, inter alia, that Section 252(i) permits differential treatment based on the LEC's cost of serving a carrier.[15] Therefore, such agreements may not be available for opt-in by another carrier. Reciprocal compensation for ISP bound traffic is another example of an issue which prior to the FCC's most recent order, was dependent upon the intent of the parties when they negotiated their initial agreements.[16]

It is also possible that Qwest and a carrier may be able to work out an agreement that is more suitable to the specific costs and circumstances involved. Therefore, Staff believes that opt-in availability should be determined on a case by case basis, if necessary, once carriers elect to opt-in to certain of the agreements, and are denied by Qwest.

b. Interference with the 271 Regulatory Process

The other issues that should be addressed separately relate to the contracts containing clauses which precluded participation or a party's opposition in the 271 regulatory proceeding before the Commission.

The data responses indicate that Qwest had written and/or oral agreements with four carriers, XO, Z-Tel (for 60 days only), Eschelon and McLeod, wherein these CLECs agreed that they would not oppose Qwest's 271 application. However, only one carrier in its comments or responses to Staff's data requests, Eschelon alleged any ongoing issues with Qwest because of its inability to participate in the 271 proceeding.[17] Staff has already conducted a workshop to address Eschelon's issues. McLeod also participated in this workshop, as well as AT&T, Covad and WorldCom.[18] Staff will be addressing the issues raised in a separate report.

Nonetheless, these contracts also raise concerns from a public policy perspective with regard to the 271 investigation. The 271 proceeding is conducted by State commissions in order to determine whether Qwest should be allowed into the interLATA interexchange market in Arizona. Under Federal law, Qwest must meet a myriad of requirements and conditions in order to receive the FCC's approval to offer interLATA service. The State Commission conducts what is a lengthy in-depth proceeding, in Arizona a proceeding that has taken 3 years to process to-date, so that the Commission can adequately perform its consultative role with the FCC under

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[15] First Report and Order at para. 1317.

[16] See, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 (Rel. Feb. 26, 1999).

[17] McLeod stated at the workshop, however, that it would have raised certain issues sooner in the 271 proceeding, but for its agreement with Qwest not to oppose Qwest's application.

[18] It is paramount that Qwest immediately take proactive measures to improve its business to business relationships with Eschelon and McLeod. Staff saw evidence of some improvement in the relationships at the recent 271 workshop in Arizona. Staff hopes that this will provide the basis for further improvements in the relationships and open the door to more active discussion and agreement between Qwest and these two CLECs.

Federal law. For this reason, interference with the Commission's processes in the 271 case, in particular, raises serious public policy concerns.

Given the responses to Staff's data requests and the comments filed in the 271 proceeding, Staff believes that an initial showing has been made that Qwest interfered with the 271 proceeding before the Commission and that the Commission's processes and the ability of two carriers to present their issues to the Commission were adversely impacted. Based upon the additional information received since its original report, Staff believes that additional fines over and above the base amount for Category 2 contracts, as well as non-monetary penalties are appropriate.

Staff believes that a sub-docket to the 271 Docket should be opened and all parties responses to Staff data requests and their comments on this issue should automatically become part of the record. A 10 day deadline should be established for additional written comment by involved CLECs. It should then be incumbent upon Qwest to demonstrate in formal written comments filed with the Commission, why it should not be held in contempt of Commission rules of process and orders for: 1) including provisions in agreements that prevented opposition to its 271 application at the Commission, 2) effectively precluding the participation of two parties at various stages of the Section 271 proceeding, and, 3) precluding parties from filing complaints with the Commission on these issues. Qwest should have 10 days to respond to the CLEC filings. Upon review of the CLEC comments and Qwest's formal response, Staff will recommend what amount of additional fines are appropriate in addition to the base fines already agreed to by Qwest. Qwest should be given the opportunity for a hearing on any additional fines imposed.[19]

3. The Section 271 Proceeding Should Be Completed Independently of the Section 252(e) Proceeding and Other Proceedings Identified Above

While both Dockets have some issues in common, Staff believes that the process set out above is a more appropriate way of addressing the issues than consolidation of both Dockets. Staff recognizes that an argument can be made that confidential unfiled agreements implicate Qwest's compliance with Checklist Item 2, or the provision of UNEs on a nondiscriminatory basis. However, the data responses do indicate confusion on the part of the CLECs as well as to whether billing settlement agreements or letter agreements are "interconnection agreements" and need to be filed with the State commission for approval. While Staff has chosen a broad interpretation, the FCC has not yet ruled on this issue, and there is always the possibility that its interpretation may differ from Staff's interpretation. Nonetheless, pending an eventual ruling by the FCC, Staff believes that the broad interpretation is the most appropriate approach and would certainly resolve any potential discrimination issues to the extent they exist on a going forward basis.

From a 271 perspective, there is also the issue of whether the record has been tainted by the unfiled agreements, some of which contained clauses which prohibited carriers from

[19] It is Staff's understanding that Qwest has already agreed to Staff's base fine amount for the Category 2 agreements and that Qwest is willing to waive its right to a hearing on the base fine amount proposed by Staff.

opposing Qwest's 271 application. The additional 271 workshop held on July 30-31, 2002 was designed to specifically address this concern. Staff will address the concerns and issues raised by Eschelon and McLeod in the workshop, and any impact on the 271 record, in a separate Report.

The Section 271 proceeding has been conducted for the last three years through a comprehensive workshop process. The workshop process has worked very well; and it is the norm as far as 271 proceedings go nationwide. The workshop process was agreed to by all parties, in lieu of evidentiary hearings. It has been very effective in building consensus among all of the parties and reaching agreed upon resolutions of many issues.

Attempting to resolve 271 issues in a consolidated proceeding with Section 252(e) filing issues would confuse the records of both proceedings unnecessarily. Consolidation would also make resolution of the issues more complex. It may also lead to adjudication of issues which had been resolved through agreed upon forums, i.e., checklist workshops, TAG meetings, and OSS workshops over a three year period which would be unnecessary. Further, consolidation of this issue with the entire 271 proceeding would be quite unwieldy. How one would define the scope of an evidentiary hearing in such a consolidated proceeding is not clear. In addition, the potential for confusion or mistakes is significant.[20]

As already discussed, the July workshops in the 271 proceeding addressed those issues raised by parties who believed that they were precluded from raising issues during the course of that case because of an agreement with Qwest. This workshop was productive in understanding and addressing both Eschelon's and McLeod's issues. In addition to this workshop, Staff believes that allowing for additional comment in the public interest phase of the 271 proceeding is also appropriate.

VII. Conclusion

Staff continues to believe that the hearing on Qwest's compliance with Section 252(e) should be limited to why Qwest did not file the various agreements with the Commission for approval and whether additional fines may be appropriate for any agreements, over and above the base amount already proposed by Staff. Section 252(i) opt-in determinations should be made on a case by case basis if necessary as they arise in a new Phase B of this Docket, if a dispute arises as to a particular carrier's opt-in rights to a specific contract.

Because of the nature of the 271 process, issues relating to allegations that Qwest interfered with the 271 regulatory process raise serious public policy concerns. A sub-docket to the 271 Docket should be opened to address the allegations that Qwest interfered with the 271 regulatory process. Given the responses to Staff's data requests and the comments filed in the 271 proceeding, Staff believes that an initial showing has been made by some CLECs that Qwest interfered with the 271 proceeding before the Commission, and that the Commission's processes and the ability of two carriers to present their issues to the Commission were adversely impacted.

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[20] See also DOJ Evaluation of Qwest 5-State Application at p. 3: "However, it is not apparent that the remedy for such prior violations, if any, lies in these proceedings rather than in effective enforcement through dockets in which such matters are directly under investigation."

As a result, Staff believes that additional fines and non-monetary penalties are appropriate. Those comments and data responses should automatically become part of the record in the new sub-docket. The involved carriers should have the opportunity to submit additional written comments within 10 days of the opening of the sub-docket. It should then be incumbent upon Qwest to demonstrate, through a formal written filing why it should not be held in contempt of Commission rules of process and orders for including provisions in its agreements with carriers which precluded them from opposing Qwest's 271 application before the Commission, and for effectively precluding parties from participating in various stages of that Docket or filing complaints with the Commission involving these issues. The Staff will consider the comments submitted and Qwest's formal filing in recommending what additional fines are appropriate. Non-monetary penalties should include, at a minimum, a formal plan for Qwest to improve its business to business relationships with Eschelon and McLeod, including the establishment of processes for improving and maintaining sound business to business relationships with all carriers.

Finally, the Section 271 proceeding should be completed independently of the Section 252(e) proceeding and other proceedings identified.

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Docket Nos.
T-00000B-97-0238
RT-00000F-02-0271

EXHIBIT "A"

COMPANY	252(e) PROCEEDING	271 PROCEEDING
@ Links Networks	**Tel. #/Address Unknown**	
Adelphia	1[1]	
AFN		
Allegiance Telecom	1, 2[2]	X
Arizona Dial Tone	1, 2 **Pay Phones**	X
AT&T	1, 2	X
Brooks Fiber Communication	**WorldCom**	
Caltech Int'l Telecom	1, 2	X
Caprock Telecom	**McLeodUSA**	
Centurytel	1, 2 **(Doesn't provide svc. In AZ)**	X
CI2	1, 2	X
Citizens Long Dist.	1, 2 **Not operating as CLEC in AZ**	X
Comm South	1, 2	X
Connect!	**#Not in Service**	
Covad	1, 2	X
Cox	1, 2	X
Digital Services	**No Certification**	
DSL Net	1, 2	X
E.Spire	**Out of Business**	
El Paso Networks	1, 2	X
Electric Lightwave	1, 2	X
Ernest Communications	1, 2	X
Eschelon Telecom	1, 2	X
Global Crossing	1, 2	X
Go Beam	1, 2 **Not Providing Services in AZ Yet**	
IG2		
Intermedia Communication	**WorldCom**	
IPVoice Communication	**Mail Returned, # Disconnected**	
Jato Communication	**Out of Business**	
KMC Telecom	1, 2	X

[1] Indicates response to Staff's Data Request No. 1
[2] Indicates response to Staff's Data Request No. 2
x Indicates response to Staff's Data Requests

COMPANY	252(e) PROCEEDING	271 PROCEEDING
Level 3	1, 2	X
Livewire Net	**Sold Business**	
Local Gateway Exchange		
Long Distance Billing	**Wrong #**	
Looking Glass Networks	1, 2	X
MCI Telecommunications	**Worldcom**	
Metropolitan Fiber	**Worldcom**	
Mountain Telephone	1, 2	X
MPower		
NAS	1 **In Bankruptcy**	
New Edge Networks	1, 2	X
North County Communications	**Faxed [redacted] 7-12-02**	
Now Communications	1, 2	X
OnFiber Carrier Svcs	1, 2	X
Quintelco	1, 2	X
RCN Telecom	1, 2	X
Reflex		
SBC Telecom	1, 2	X
Smoke Signal Communications	1, 2	X
Sprint	1, 2	X
Staples (**Now Matrix**)	1, 2	
Talk America	1,	X
TCG	**ATT**	
Tel West Communications	1, 2	
Telepacific Communications	1 **Certificate Cancelled**	
Teligent Services	1, 2	
Tess Communications	**No Longer in Business**	
Universal Access of AZ	1, 2 **Reseller**	
Verizon Select		
Verizon Avenue	1, 2	X
Vivo Communications	**Certificate Cancelled**	
Vyvx (Williams Comm)	1, 2	X
Winstar Wireless		
WLNI	1, 2	X
WorldCom	1, 2	X
XO Arizona	1, 2	X
Z-Tel	1, 2	X
American Communications	No annual Rpt	
The Phone Company/Network Svc. Of New Hope	**Talk America**	

COMPANY	252(e) PROCEEDING	271 PROCEEDING
Time Warner	1, 2	X
TRI	No annual Rpt	
Transamerica	**No CC&N**	
Matrix	1, 2	X
McLeod	1, 2	X
Alltel	2 **Application Withdrawn**	
ICG	1 **CC&N in AZ Pending; in Bankruptcy**	X
GST	**Time Warner**	
One Point	**Verizon Avenue**	
Excell Agent Svcs.	**Withdrew Application**	
Rhythm Links	**Not in Business**	

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EXHIBIT "B"

In re the Matter of Qwest Corporation's Compliance with Section 252(e) of the Telecommunications Act of 1996

ARIZONA CORPORATION COMMISSION STAFF'S
FIRST SET OF DATA REQUESTS
Docket Number RT-00000F-02-0271

STAFF -1:1 On an ongoing basis, provide copies of all data requests received from any other parties to this proceeding and your response.

STAFF -1:2 Have all interconnection agreements and amended interconnection agreements, or portions thereof, entered into between you and Qwest been submitted to the ACC for approval?

STAFF -1:3 Have any interconnection agreements or amendments to interconnection agreements, or portions thereof, not been filed with the ACC for approval? If not, explain why.

STAFF -1:4 Please provide a detailed list of all ACC approved interconnection agreements with Qwest.

STAFF -1:5 Please submit every interconnection agreement or amended interconnection agreement, or portions thereof, with Qwest not filed with the ACC which was entered into by you.

STAFF -1:6 Have there been any agreements not filed with the Commission between you and Qwest that either modify or augment the terms and conditions set forth in the filed and approved interconnection agreements between you and Qwest? If so, please provide a list of such agreements and a copy of them.

In re the Matter of Qwest Corporation's Compliance with Section 252(e) of the Telecommunications Act of 1996

ARIZONA CORPORATION COMMISSION STAFF'S SECOND DATA REQUESTS TO ALL CLEC INTERVENORS
Docket RT-00000F-02-0271

STAFF 2:1 Has your company, or any affiliate of your company, entered into any oral agreement[s] with Qwest which affects the rates, terms and conditions applicable to interconnection, wholesale services and/or unbundled network elements? If your response is yes, please provide a list of such oral agreements, the date entered into and the term of such contract.

STAFF 2:2 Please provide all of the terms, conditions, and rates contained in any oral agreement which affect or affected interconnection, wholesale services and/or unbundled network elements between your company, or any affiliate of your company, and Qwest, which have not already been filed with the Arizona Corporation Commission for approval.

STAFF 2:3 Have all oral agreements between Qwest and your company, or any affiliate of your company, which affects rates, terms and conditions applicable to interconnection wholesale services and/or unbundled network elements been filed with the Arizona Corporation Commission for approval? If your response is no, please provide a list of any such agreements not filed with the Arizona Corporation Commission, the date this agreement was entered into, and the terms of such agreement.

STAFF 2:4 Have you had any agreements with Qwest which have since been terminated, cancelled or have expired which provided competitive advantages relative to interconnection, wholesale services or unbundled network elements to you relative to other CLECs and/or with Qwest? If so, describe and give the timeframe of each agreement.

STAFF 2:5 Are you currently a party to any agreements with Qwest which provide a competitive advantage relative to interconnection, wholesale services and unbundled network elements relative to other CLECs and/or with Qwest?

STAFF 2:6 Does your company, or a CLEC in general, have a shared responsibility under the Federal Act with Qwest to file interconnection agreements with the Arizona Corporation Commission for approval. If your answer is no, please explain in detail why you do not share in this responsibility and cite any relevant authority.

C

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EXHIBIT "C"

ARIZONA CORPORATION COMMISSION STAFF'S
FIRST SET OF DATA REQUESTS TO
QWEST
Docket RT-00000F-02-0271

STAFF -1:1 Has Qwest entered into any oral agreements with another telecommunications carrier which affects or affected the rates, terms and conditions applicable to interconnection, wholesale services and/or unbundled network elements? If yes, please provide a list of such agreements, the date entered into and the term of each agreement.

STAFF -1:2 Have all oral agreements entered into with Qwest with another telecommunications carrier which affects or affected the rates, terms and conditions applicable to interconnection, wholesale services and/or unbundled network elements been filed with the Arizona Corporation Commission ("Commission") for approval? If your response is no, please provide a list of such agreements, the date entered into and the terms of such agreements that have not been filed with the Commission for approval.

STAFF 1:3 Please provide all of the rate, terms and conditions contained in any oral agreement which affects or affected interconnection, wholesale services and/or unbundled network elements between Qwest and any other CLEC carrier which have not already been filed with the Arizona Corporation Commission for approval.

STAFF 1:4 Please indicate which, if any, of the unfiled agreements submitted into the record in this proceeding, have since been cancelled, terminated or have expired by their terms. Please provide a list of the agreements, the date cancelled, terminated or the date of expiration. If any agreements were cancelled or terminated prior to their natural expiration date, please discuss in detail why such agreements were cancelled or terminated.

STAFF 1:5 Of the agreements ultimately identified by Staff as interconnection agreements which Qwest is required to file with the Commission for approval under § 252(e), does Qwest agree to submit such agreements publicly for approval pursuant to § 252(e) of the Federal Act.

STAFF 1:6 Of the agreements ultimately identified by Staff as interconnection agreements, will Qwest allow other carriers to opt into the provisions of any of these agreements if they have since been cancelled, terminated or expired. If so, what would be the term of such opt-in arrangements. If not, please identify the agreement, and its terms and conditions, and why Qwest would be unwilling to make it available.

Arizona
Docket No. RT-00000F-02-0271
STF 01-001

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 001

Has Qwest entered into any oral agreements with another telecommunications carrier which affects or affected the rates, terms and conditions applicable to interconnection, wholesale services and/or unbundled network elements? If yes, please provide a list of such agreements, the date entered into and the term of each agreement.

RESPONSE:

Qwest has not entered into any oral agreements with another telecommunications carrier which affects or affected the rates, terms and conditions applicable to interconnection, wholesale services and/or unbundled network elements.

Qwest account managers, employees and officers at all levels and throughout its organization regularly and routinely communicate with customers, with other persons with whom Qwest has business relationships, and internally with other officers, employees and representatives regarding numerous subjects and through a variety of media, and that any of such communications, however granular, may in some fashion relate to interconnection, wholesale services or unbundled network elements; but, Qwest reiterates that such discussions do not amount to agreements affecting the rates, terms or conditions of interconnection, wholesale services or unbundled network elements.

Respondent: Arturo Ibarra and Legal

Arizona
Docket No. RT-00000F-02-0271
STF 01-002

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 002

Have all oral agreements entered into with Qwest with another telecommunications carrier which affects or affected the rates, terms and conditions applicable to interconnection, wholesale services and/or unbundled network elements been filed with the Arizona Corporation Commission (" Commission") for approval? If your response is no, please provide a list of such agreements, the date entered into and the terms of such agreements that have not been filed with the Commission for approval.

RESPONSE:

Please see response to Data Request 1-1.

Respondent: Arturo Ibarra and Legal

Arizona
Docket No. RT-00000F-02-0271
STF 01-003

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 003

Please provide all of the rate, terms and conditions contained in any oral agreement which affects or affected interconnection, wholesale services and/or unbundled network elements between Qwest and any other CLEC carrier which have not already been filed with the Arizona Corporation Commission for approval.

RESPONSE:

Please see response to Data Request 1-1.

Respondent: Arturo Ibarra and Legal

Arizona
Docket No. RT-00000F-02-0271
STF 01-004

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 004

Please indicate which, if any, of the unfiled agreements submitted into the record in this proceeding, have since been canceled, terminated or have expired by theft terms. Please provide a list of the agreements, the date canceled, terminated or the date of expiration. If any agreements were canceled or terminated prior to their natural expiration date, please discuss in detail why such agreements were canceled or terminated.

RESPONSE:

Qwest assumes that the issue presented by this data request is whether a CLEC may opt into an interconnection agreement that has been canceled, terminated or expired by its terms. Qwest suggests that it is premature to address those issues here. Once any of the unfiled agreements has been approved by the Commission pursuant to Section 252(e), and a CLEC thereafter requests to opt into a certain agreement or provisions within an agreement under Section 252(i), at that time the parties, and if necessary the Commission, can resolve the issues relating to opting into an expired, canceled or terminated agreement.

Qwest requests that this data request be limited to the agreements identified by the Staff as agreements that should be filed under Section 252(a). Qwest submitted approximately one hundred agreements, and the status of the agreements that do not have to be filed under Section 252(a) is far removed from the issues in this proceeding, and would be extremely burdensome to ascertain. As it is, Qwest requests additional time in which to respond to this data request due to the detailed nature of determining whether they have been canceled, expired, or expired by their terms.

Respondent: Legal

Arizona
Docket No. RT-00000F-02-0271
STF 01-005

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 005

Of the agreements ultimately identified by Staff as interconnection agreements which Qwest is required to file with the Commission for approval under § 252(e), does Qwest agree to submit such agreements publicly for approval pursuant to § 252(e) of the Federal Act.

RESPONSE:

Qwest wishes to confer with Staff about the final list of agreements, but, generally the answer to the question is yes, with the exception that listed agreement may simply be outside the scope of Section 252(a). For example, the previously listed agreement between Qwest and Covad was entered into in 1999, when Qwest was not an ILEC and, therefore, not subject to section 252. Qwest would like to confer with Staff on this and similar types of issues.

Respondent: Legal

Arizona
Docket No. RT-00000F-02-0271
STF 01-006

INTERVENOR: Arizona Corporation Commission Staff

REQUEST NO: 006

Of the agreements ultimately identified by Staff as interconnection agreements, will Qwest allow other carriers to opt into the provisions of any of these agreements if they have since been canceled, terminated or expired. If so, what would be the term of such opt-in arrangements. If not, please identify the agreement, and its terms and conditions, and why Qwest would be unwilling to make it available.

RESPONSE:

Qwest believes that the law and rules governing Section 252(a), 252(e), and 252(i) will govern the procedure for determining whether agreements filed with the Commission will be approved by the Commission and whether such agreements will be available for opt in. Only once an agreement has been approved, and once an agreement has been requested for opt in under Section 252(i), does this question become ripe. Thus, it is premature at this time to resolve whether a particular provision or even the twenty-five agreements thus identified by the Staff as interconnection agreements could be available for opt in. Qwest has taken the position that, generally, interconnection agreements no longer in effect are not available for opt in under Section 252(i). Qwest has permitted interconnection agreements that are in "evergreen status" to be available for opt-in.

However, as requested under Data Request 1-5, Qwest will undertake to determine which of the twenty-five agreements identified by the Staff have been canceled, terminated, or expired by their terms.

Respondent: Legal

D

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IN RE THE MATTER OF QWEST CORPORATION'S COMPLIANCE WITH SECTION 252(E) OF THE TELECOMMUNICATIONS ACT OF 1996

Responses To Staff's First Set Of Data Requests
To Covad Communications Company
Docket No. Rt-00000f-02-0271

STAFF-1:1. On an ongoing basis, provide copies of all data requests received from any other party to this proceeding and your response.

RESPONSE: Covad will comply with this Request.

STAFF-1:2. Have all interconnection agreements and amended interconnection agreements, or portions thereof, entered into between you and Qwest been submitted to the ACC for approval?

RESPONSE: All agreements between Qwest and Covad labeled as interconnection agreements and interconnection agreement amendments have been filed with the ACC. However, not all agreements between Qwest and Covad have been filed with the ACC. Specifically, the following agreements to which Qwest and Covad are parties have not been filed with the Commission:

Service Level Agreement, April 2000
Settlement Agreement (Equipment Theft), 2001
Settlement Agreement (Facilities Decommissioning), 2002
Take or Pay Agreement, 1999
Private Line Services Agreement, 1999

STAFF-1:3. Have any interconnection agreements and amendments to interconnection agreements, or portions thereof, not been filed with the ACC for approval? If not, explain why.

RESPONSE: The Act imposes a requirement to file agreements if they contain terms and conditions of interconnection. Because not all of the agreements set out above contain terms and conditions of interconnection (including the Settlement Agreement (Equipment Theft), Take or Pay Agreement, Private Line Services Agreement) they are not subject to any filing agreement. With respect to the Settlement Agreement (Facilities Decommissioning), Covad did not believe filing was required under the Act because the settlement agreement (1) resolved a specific, discrete dispute between the companies; (2) included terms that applied only to the specific collocation sites Covad was decommissioning; and (3) did not contain any terms and conditions that applied on a

going-forward basis or that determined how the parties would conduct business at any point in the future. With respect to the Service Level Agreement ("SLA"), Covad at all times has made clear that it did not consider that agreement to be confidential and that it did, in fact, contain terms and conditions of interconnection. Attached hereto at Tab 1 is the Affidavit of W. Clay Deanhardt that describes the circumstances surrounding the execution, and the discussions regarding the filing of, the SLA.

STAFF-1:4. Please provide a detailed list of all ACC approved interconnection agreements with Qwest.

RESPONSE: Interconnection Agreement between DIECA Communications, Inc., dba Covad Communications Company and U S WEST Communications, Inc., 1/15/99

Amendment to Interconnection Agreement (UDIT Amendment), 2001

Interim Line Sharing Agreement, April 2000

Amendment to Interim Line Sharing Agreement, 2001

STAFF-1:5. Please submit every interconnection agreement or amended interconnection agreement, or portions thereof, with Qwest not filed with the ACC and which was entered into by you.

RESPONSE: *See* Tab 2.

STAFF-1:6. Have there been any agreements not filed with the Commission between you and Qwest that either modify or augment the terms and conditions set forth in the filed and approved interconnection agreements between you and Qwest? If so, please provide a list of such agreements and a copy of them.

RESPONSE: *See* Responses to STAFF 1:2, 1:3, 1:5 and Tab 2.

ARIZONA CORPORATION COMMISSION STAFF'S
FIRST SET OF DATA REQUESTS TO
QWEST AND THE CLECS IN ARIZONA
DOCKET NO. RT-00000F-02-0271
July 24, 2002

STAFF 1-1: **On an ongoing basis, provide copies of all data requests received from any other parties to this proceeding and your response.**

RESPONSE: Attached are the data requests that Electric Lightwave, Inc. ("ELI") has received from RUCO and Qwest. ELI has responded to RUCO and Qwest's data requests by producing copies of its responses to Staff's First, Second and Fifth Set of Data Requests.

STAFF 1-2: **Have all interconnection agreements and amended interconnection agreements, or portions thereof, entered into between you and Qwest been submitted to the ACC for approval?**

RESPONSE: Yes, except for certain billing settlement agreements and a recent amendment to ELI and Qwest's basic interconnection agreement.

STAFF 1-3: **Have any interconnection agreements or amendments to interconnection agreements, or portions thereof, not been filed with the ACC for approval? If not, explain why.**

RESPONSE: Certain billing settlement agreements between ELI and Qwest have not been filed with the ACC for approval. ELI does not consider these settlements to be interconnection agreements as defined in the Telecommunications Act of 1996.

ELI and Qwest recently concluded an amendment to their basic interconnection agreement in Arizona. This amendment is dated June 20, 2002. ELI does not know whether this amendment has been submitted to the ACC for approval.

STAFF 1-4: **Please provide a detailed list of all ACC approved interconnection agreements with Qwest.**

RESPONSE: ELI's basic interconnection agreement with Qwest in Arizona is entitled "Local Interconnection Agreement Between U S WEST Communications, Inc. and Electric Lightwave, Inc. for Arizona," and the Commission approved this agreement in Decision No. 62902 on September 18, 2000.

STAFF 1-5: **Please submit every interconnection agreement or amendment interconnection agreement, or portions thereof, with Qwest not filed with the ACC which was entered into by you.**

RESPONSE: Certain billing settlement agreements dated December 30, 1999, April 27, 2000 and April 26, 2002 have been submitted in response to the Staff's request of March 4, 2002.

ELI and Qwest's June 20, 2002, amendment to their basic interconnection agreement in Arizona is attached.

STAFF 1-6: **Have there been any agreements not filed with the Commission between you and Qwest that either modify or augment the terms and conditions set forth in the filed and approved interconnection agreements between you and Qwest? If so, please provide a list of such agreements and a copy of them.**

RESPONSE: Please see the response to STAFF 1-5 above.

that it has not engaged in an antitrust violation, then its rates are inflated, and those rates should be reduced (through allowing opt-ins to what are actually discounts and/or through a cost determination lowering rates), because Qwest is required to offer cost-based rates. Because Qwest reportedly imposed confidentiality restrictions on the agreements with various carriers, Qwest was uniquely situated to know that the term, while in the form of various types of purchase agreements, may have been, in reality, a term of interconnection.

STAFF 2-5: Are you currently a party to any agreements with Qwest which provide a competitive advantage relative to interconnection, wholesale services and unbundled network elements relative to other CLECs and/or with Qwest?

RESPONSE: *See* Response to Staff Request 2-4; *see also* Eschelon's Response to Staff Request Number 1:2.

STAFF 2-6: Does your company, or a CLEC in general, have a shared responsibility under the Federal Act with Qwest to file interconnection agreements with the Arizona Corporation Commission for approval? If your answer is no, please explain in detail why you do not share in this responsibility and cite any relevant authority.

RESPONSE: Subject to, and without waiving, the foregoing objections, Eschelon provides this Response. No. Regarding Qwest's obligation to file agreements, Eschelon agrees with the following quotation by Anthony Mendoza, the Minnesota Department of Commerce deputy commissioner for telecommunications: "'[Qwest] is the only company that is required to disclose them to the PUC.'" *See* "Companies didn't clear deals with PUC, regulators say," Steve Alexander, Minneapolis *Star Tribune*, Feb 15, 2002, p. D2 (copy attached to Eschelon's Response to Staff Request 1:2). The federal Act places the burden on Qwest to make terms of interconnection, if any, available to other CLECs on a nondiscriminatory basis, and therefore it is Qwest's responsibility to make that determination and file any such agreements pursuant to the Act. Placement of the burden on Qwest makes sense, because Qwest has superior access to information relevant to whether a term or condition is of the type for which filing is required. (For example, while a CLEC may believe that a term is in settlement of an individual dispute, Qwest is in a position to know whether the dispute is truly unique or the experience is shared by other CLECs and whether the same or similar solution is suitable for, and should be made available to, other CLECs.) Eschelon is not aware of anything in the agreements that prevented Qwest from filing them. Qwest could have requested written consent for disclosure from CLECs at any time, if Qwest claims it was concerned about the confidentiality provisions that Qwest required as part of agreements. *See also* Response to Staff Request Number 2-4.

MCLEODUSA RESPONSES

Docket RT-00000F-02-0271

McLeodUSA Responses to Staff

Staff 1:1
No data requests from other parties have been received, except for requests for copies of responses to other parties.

Staff 1:2
McLeodUSA believes that all agreements required to be filed pursuant to 47 U.S.C. Sections 251 and 252 have been filed for approval.

Staff 1:3
See response to Staff 1:2.

Staff 1:4
The only interconnection agreement between Qwest and McLeodUSA used in Arizona is the agreement approved in Decision No. 63335, Docket Nos. T-01051B-00-1058 and T-03267A-00-1058, on February 2, 2001 (and as subsequently amended).

Staff 1:5
See response to Staff 1:2.

Staff 1:6
See response to Staff's Second Set of Data Requests in this docket.

E

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STAFF 3-2: Did your company participate in the 271 proceeding in Arizona at any time? Please indicate the time period in which you participated. If your Company elected not to participate, what were the reasons behind its decision?

RESPONSE: Subject to, and without waiving, the foregoing objections, Eschelon provides this Response. Eschelon participated in the ACC 271 proceeding in September and October of 2000. *See* Eschelon's Comments Addressing UNE Combinations, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Docket No. T-00000A-97-0238 (Sept. 21, 2000); *see also* Verification of Garth Morrisette (same); *see also* Transcript of Proceedings (October 2000).

Pursuant to the Escalations and Business Solutions Letter signed by Qwest and Eschelon (Nov. 15, 2000) ("Escalation Letter") (document #6 in the 3-ring binder produced to Staff in response to Staff Request Number 1:2 in Arizona docket number RT-00000F-02-0271) (copy enclosed), Eschelon could not oppose Qwest in the ACC 271 proceeding. Despite Eschelon's arguments to the contrary, Qwest interpreted that agreement more broadly than not opposing Qwest and said that it required Eschelon not to participate in the 271/SGAT proceedings. *See* Eschelon's Response to Qwest's letter to Commissioner Marc Spitzer in Arizona Docket Numbers RT-00000F-02-0271 and T-00000A-97-0238 (June 24, 2002) (copy enclosed and incorporated by reference).

STAFF 3-3: If your response to Question 3-2 is yes, please indicate the issues raised by you and whether they were satisfactorily resolved.

RESPONSE: Subject to, and without waiving, the foregoing objections, Eschelon provides this Response.

With respect to issues raised, *see* Eschelon's Comments Addressing UNE Combinations, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Docket No. T-00000A-97-0238 (Sept. 21, 2000); *see also* Verification of Garth Morrisette (same) (copies enclosed and incorporated by reference).

The issues were not all resolved satisfactorily. *See* Eschelon's Response to Qwest's letter to Commissioner Marc Spitzer in Arizona Docket Numbers RT-00000F-02-0271 and T-00000A-97-0238 (June 24, 2002), Affidavit of F. Lynne Powers (with exhibits), Affidavit of Ellen Copley (with exhibit), and email to Andrew Crain and Charles Steese (copies enclosed and incorporated by reference). *See also, e.g.*, Qwest Report Card, March 2002 (detail included with Report Card is confidential/trade secret and contains customer-identifying information and competitively sensitive material. Please afford all protection under confidentiality protective order.).

Docket T-00000B-97-0238

McLeodUSA Responses to Staff

Staff 2:1
Yes, in proceedings directly related to McLeodUSA or its affiliates (certification, change of control, etc.).

Staff 2:2
No. Decisions to participate or not to participate in regulatory proceedings are the result of considerations related to allocation of limited legal/regulatory resources at McLeodUSA. See Response to Staff 2:5.

Staff 2:3
Not applicable.

Staff 2:4
Although it is not clear to McLeodUSA whether the following "limited" its ability to participate in any particular proceeding, McLeodUSA states that it has orally agreed to remain neutral on (neither support nor oppose) Qwest's 271 applications as long as Qwest is in compliance with all our agreements and with all applicable statutes and regulations. McLeodUSA does not have any agreement to stay out of all Qwest-related proceedings.

Staff 2:5
Unknown. As long as Qwest was in compliance there was little or no basis or reason to participate. We have focused legal and regulatory resources on SBC/Ameritech because our problems with them are more severe.

Staff 2:6
See response to Staff 2:4. Assuming that response describes a limitation, there were no other specific limitations.

Staff 2:7
See response to Staff 2:4. Assuming that response describes a limitation, there were no other specific limitations.

Staff 2:8
McLeodUSA does not know what, if any, issues would have been raised in the absence of the statement provided in its response to Staff 2:4.

Staff 2:9
See response to Staff 2:8.

Staff 2:10
See response to Staff 2:5 and 2:8.

Staff 2:11
Not at this time.

Staff 2:12
No. To the extent that McLeodUSA has not participated in other related proceedings (e.g., UNE pricing), the decision has been the result of considerations related to allocation of limited legal/regulatory resources at McLeodUSA. See response to Staff 2:5.

Staff 2:13
McLeodUSA did not agree "not to participate" in any particular proceeding. See responses to Staff 2:4 and 2:5.

Staff 2:14
See responses to Staff 2:4, 2:5 and 2:13. McLeodUSA believes that all agreements referenced above were provided to either the Commission or Staff by Qwest.

Z-Tel Communications Inc's.
Response to Staff's Third Set of Data Requests

3:1 Qwest's Performance Assurance Plan (PAP) proposal in Docket No. T-00000A-97-0238.

3:2 Yes, Z-Tel participated in PAP proceeding from third Quarter 2000 through 2001.

3:3 Z-Tel raised PAP issues concerning PIDs, penalty caps, change management procedures, root cause analysis, the K-Table and the minimum per occurrence penalty.

3:4 Yes.

3:5 Yes. Z-Tel was asking for expedited interconnection agreement negotiations in 8 Qwest states.

3:6 Z-Tel agreed not to participate in any commission proceedings for 60 days.

3:7 For a period of 60 days. From May 18, 2001 to July 17, 2001.

3:8 None.

3:9 Yes.

3:10 N/A

3:11 None

3:12 No.

3:13 We were able to implement negotiated interconnection agreements on and expedited basis for 8 states.

3:14 It is Z-Tel's understanding that the Memorandum of Understanding with Qwest, dated May 18, 2001, has been provided to the ACC.

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EXHIBIT "F"

LIST OF ALL CONFIDENTIAL UNFILED AGREEMENTS

1.	Eschelon (ATI)	Confidential Trade Secret Stipulation with US WEST dated 2/28/00
2.	Eschelon	Trial Agreement with Qwest dated 5/1/00
3.	Eschelon	Confidential Agreement with Qwest dated 11/15/00
4.	Eschelon	Confidential Amendment to Confidential Trade Secret Stipulation with Qwest dated 11/15/00
5.	Eschelon	Confidential Letter Agreement On Status of Switched Access Minute Reporting with Qwest dated 7/3/01
6.	Eschelon	Settlement Agreement with Qwest dated 3/1/02
7.	Eschelon	Letter from Qwest to Develop Implementation Plan dated 11/14/00
8.	Eschelon	Letter from Eschelon Regarding Reciprocal Compensation dated 8/1/01
9.	Eschelon	Letter from Qwest Regarding Daily Usage Information dated 11/15/00
10.	Eschelon	Confidential Purchase Agreement with Qwest dated 10/1/00
11.	Eschelon	Feature Letter from Qwest dated 11/15/00
12.	Eschelon	Confidential Billing Settlement Agreement with Qwest dated 11/15/00
13.	Eschelon (ATI)	Confidential Second Amendment To Confidential/Trade Secret Stipulation with US WEST dated 3/19/01
14.	Eschelon	Confidential Third Amendment to Confidential/Trade Secret Stipulation with Qwest dated 7/3/01
15.	Eschelon	Settlement Agreement Letter from Qwest dated 2/22/02
16.	Eschelon (Cady)	Stipulation and Agreement with US WEST dated 2/29/00
18.	Eschelon	Implementation Plan dated 7/31/01
19.	McLeodUSA	Confidential Letter Agreement with Qwest dated 10/26/00
20.	McLeodUSA	Confidential Settlement Document with US WEST dated 4/25/00
21.	McLeodUSA	Purchase Agreement dated with Qwest 10/26/00
22.	McLeodUSA	Confidential Amendment to Confidential Billing Settlement Agreement with Qwest dated 10/26/00
23.	McLeodUSA	Amendment to Confidential Billing Settlement Agreement with Qwest dated 10/26/00
24.	McLeodUSA	Confidential Settlement Agreement with US WEST dated 5/1/00
25.	McLeodUSA	Confidential Agreement to Provide Directory Assistance Database Entry Services with Qwest dated 2/12/01
26.	McLeodUSA	Confidential Billing Settlement Agreement with Qwest dated 9/29/00

27.	McLeodUSA	Confidential Amendment to Confidential Billing Settlement Agreement with Qwest dated 9/29/00
28.	McLeodUSA	Confidential Billing Settlement Agreement with US WEST dated 4/28/00
29	McLeodUSA	Confidential Billing Settlement Agreement with Qwest dated 12/31/01
30.	McLeodUSA	Confidential Billing Settlement Agreement with Qwest dated 12/31/01
31.	McLeodUSA	Agreement for Withdrawal of Request for Reconsideration of Approval of Reciprocal Compensation ICA Amendment dated 9/18/00
32.	McLeodUSA	Confidential Agreement re: Escalation Procedures and Business Solutions, dated 10/26/00
33.	Electric Lightwave	Confidential Billing Settlement Agreement and Release with US WEST dated 12/30/99
34.	Electric Lightwave	Amendment No. One to Confidential Settlement Agreement and Release with US WEST dated 6/21/00
35.	Electric Lightwave	Amendment Number Two to Confidential Settlement and Release with Qwest dated 4/30/01
36.	Electric Lightwave	Confidential Settlement Document and Release with U S WEST dated 6/16/99
37.	Electric Lightwave	Confidential Billing Settlement Agreement with US WEST dated 4/27/01
38.	Electric Lightwave	Binding Letter Agreement with Qwest dated 7/19/013
39.	Electric Lightwave	Third Amendment to Confidential Billing Agreement with Qwest dated 7/19/01
40.	Electric Lightwave	Confidential Billing Settlement Agreement dated 4/26/02
41.	WorldCom	Confidentiality Agreement with Qwest dated 4/2/01
42.	WorldCom	Settlement Agreement with US WEST dated 11/18/99
43.	MCIMetro (WCom)	Confidential Billing Settlement Agreement dated 12/14/00
44.	WorldCom	Settlement Agreement with Qwest dated 11/30/00
45.	WorldCom	Confidential Billing Settlement Agreement dated 6/29/01
46.	WorldCom	Settlement Agreement with Qwest dated 6/29/01
47.	WorldCom	Business Escalation Agreement dated 6/29/01
48.	WorldCom	Confidential Billing Settlement Agreement with Qwest dated 6/29/01
49.	Allegiance	Confidential Billing Settlement Agreement dated 12/24/01
50.	Allegiance	Publishing Agreement for Official Listings with DEX dated 12/20/99
51.	Allegiance	Internetwork Calling Name Delivery Service Agreement with US WEST dated 3/23/00
52.	Allegiance	Directory Assistance Agreement with US WEST DEX dated 12/20/99
53.	Allegiance	Operator Service Agreement with Qwest dated 6/19/02
54.	XO (Nextlink)	Confidential Billing Settlement Agreement with US WEST dated 5/12/00

55.	XO	Confidential Billing Settlement Agreement with QCC dated 12/31/01
56.	XO	Confidential Billing Settlement Agreement with Qwest dated 12/31/01
57.	XO	Take or Pay Agreement with Qwest Services Corp. dated 12/31/01
58.	XO	Amendment to Confidential Billing Settlement Agreement
59.	Covad	US WEST Service Level Agreement Unbundled Loop Service dated 4/19/00
60.	Covad	Private Line Services Agreement dated 1/19/99
61.	Covad	Settlement Agreement (Facilities Decommissioning) 1/3/02
62.	Covad	Settlement Agreement (Equipment Theft) 2001
63.	Covad	Take or Pay Agreement 1/19/99
64.	Teleport (AT&T)	Confidential Billing Settlement Agreement and Release dated 3/13/00
65.	AT&T	Agreement dated 4/24/00 relating to Merger/Open Access Issues
66.	AT&T	Facility Decommissioning Reimbursement Agreement dated 12/27/01
67.	SBC	Letter from US WEST Regarding Proposed Settlement Terms dated 6/1/00
68.	SBC & NAS	Confidential Consent to Assignment & Collocation Change of Responsibility Agreement dated 6/1/01
69.	SBC	Facility Decommissioning Agreement with Qwest dated 10/5/01
70.	e-spire	Confidential Billing Settlement Agreement with Qwest dated 6/20/01
71.	e-spire	Confidential Agreement with Qwest dated 6/28/01
72.	Global Crossing	Settlement Agreement and Release with Qwest dated 9/18/00
73.	Global Crossing	Confidential Billing Settlement Agreement with Qwest dated 7/13/01
74.	GST	Confidential Billing Dispute Settlement Agreement and Release with US WEST dated 1/7/00
75.	Integra Telecom	Facility Decommissioning Agreement dated 11/20/01
76.	MAP Mobile	Confidential Billing Settlement Agreement with Qwset dated 10/19/00
77.	Metrocall	Confidential Billing Settlement Agreement dated 12/4/00
78.	Mountain Telec.	Confidential Billing Settlement Agreement with Qwest dated 8/30/00
79.	Nextel	Settlement Agreement and Mutual Release with Qwest dated 9/20/01
80.	Royal Paging	Confidential Billing Settlement Agreement dated 3/28/01
81.	Scindo Networks	Confidential Settlement Agreement with Qwest dated 5/4/01

82.	Scindo Networks	Confidential Settlement Agreement with Qwest dated 8/10/01
83.	Sprint	Settlement Agreement with US WEST dated 12/18/00
84.	Ernest Comm.	Confidential Settlement Agreement and Release with with Qwest dated 9/17/01
85.	VoiceStream	Confidential Billing Settlement Agreement dated 6/5/01
86.	Western Wireless	Settlement Agreement and Mutual Release with Qwest dated 4/17/00
87.	Williams	Facility Decommissioning Agreement with Qwest dated 10/2/01
88.	Z-Tel	Memo of Understanding with Qwest dated 5/18/01
89.	Paging Network	Confidential Billing Settlement Agreement with Qwest dated 4/23/01
90.	Time Warner	Confidential Billing Settlement Agreement with Qwest Dated 3/14/01
91.	Arch Comm.	Confidential Billing Settlement Agreement with Qwest Dated 6/16/01

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EXHIBIT "G"

REVISED LIST OF AGREEMENTS[1]
SUBJECT TO 252(e) FILING REQUIREMENT

CATEGORY 1 AGREEMENTS

1)	Eschelon	Confidential Trade Secret Stipulation between ATI and US WEST USWC and Eschelon (fka ATI) dated 2/28/00
2)	Eschelon	Confidential Amendment to Confidential/Trade Secret Stipulation with Qwest dated 11/15/00
3)	Eschelon	Confidential Billing Settlement Agreement with Qwest dated 11/15/00
4)	Eschelon	Letter Agreement from Qwest regarding Daily Usage Information dated 11/15/00
5)	Eschelon	Definitive Settlement Agreement letter dated 2/22/02
6)	Eschelon	Implementation Plan dated 7/31/01
7)	Eschelon	Settlement Agreement between Qwest and Eschelon dated 3/1/02
8)	McLeod	Settlement Document Relating to Qwest Merger dated 4/25/00
9)	McLeod	Amendment to Confidential Billing Settlement Agreement dated 10/26/00
10)	McLeod	Purchase Agreement dated 10/26/00, and Related Oral Agreement
11)	ELI	Amendment No. One to Confidential Settlement Agreement and Release with USWC dated 6/21/00
12)	ELI	Amendment No. Three to Confidential Settlement Agreement and Release with Qwest dated 4/26/02
13)	ELI	Confidential Billing Settlement Agreement and Release between USWC and ELI dated 12/30/99
14)	AT&T	Facility Decommissioning Reimbursement Agreement with Qwest dated 12/27/01
15)	Covad	US WEST Service Level Agreement for Unbundled Loop Services dated 4/28/00
16)	Covad	Settlement Agreement (Facilities Decommissioning), 2002
17)	XO (Nextlink)	Confidential Billing Settlement Agreement with USWC dated 5/12/00
18)	Global C.	Settlement Agreement and Release with Qwest dated 9/18/00
19)	Global C.	Confidential Billing Settlement Agreement dated 7/20/01
20)	Integra	Facility Decommissioning Agreement with Qwest dated 11/20/00
21)	SBC	Facility Decommissioning Agreement with Qwest dated 10/5/01
22)	Williams	Facility Decommissioning Agreement with Qwest dated 10/2/01

[1] In several cases, Qwest and the other party to the agreement stated that they would file interconnection agreements with the Commission which embodied the terms of their billing settlement agreement. It was not clear, however, whether the parties ever followed through with the filing. In these cases, Qwest should be able to demonstrate that it filed a subsequent interconnection agreement embodying the terms of the settlement agreement as stated.

23)	GST	Confidential Billing Dispute Settlement Agreement and Release dated 1/7/00
24)	Allegiance	Confidential Billing Settlement Agreement with Qwest dated 12/24/01
25)	Allegiance	Internetwork Calling Name Delivery Service Agreement dated 8/23/00
26)	Allegiance	Directory Assistance Agreement with US WEST dated 12/20/99
27)	Allegiance	Operator Services Agreement with Qwest dated 6/10/02
28)	WorldCom	Confidential Billing Settlement Agreement with Qwest dated 12/14/00

CATEGORY 2 AGREEMENTS[1]

1.	Eschelon	Confidential Agreement between Qwest and Eschelon dated 11/15/00 (271)
2.	XO	Confidential Billing Settlement Agreement (XO subs) Qwest and XO (fka Nextlink dated December 31, 2001 (271)
3.	McLeod	Oral Agreement between Qwest and McLeod that McLeod would not oppose Qwest 271 application
4.	Z-Tel	Agreement not to participate in Qwest 271 proceeding for 60 day negotiation period.
5.	Allegiance	Confidential Billing Settlement Agreement with Qwest dated 12/24/01 (Cost Docket)
6.	McLeod	Confidential Settlement Document with USWC dated 4/25/00 (Merger Docket)
7.	Covad	Service Level Agreement dated 4/19/00 (Merger)
8.	AT&T	Agreement with Qwest relating to Merger/Open Access Issues dated 4/24/00
9.	SBC	Letter Settlement Agreement with Qwest dated 6/1/00 (Merger)

[1] Most of the Merger related agreements involved the settlement of issues in exchange for withdrawal of participation in that Docket. The AT&T agreement involved an agreement by AT&T not to participate in the Qwest Merger Docket in exchange for Qwest agreeing not to participate in AT&T's Open Access proceedings. The SBC agreement was docketed with the Commission immediately after it was entered into.

EXHIBIT H

CONFIDENTIAL

AND

PROPRIETARY

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EXHIBIT "I"

List of Agreements No Longer in Effect

1. Confidential Stipulation Between ATI and US West dated 12/28/00

2. Settlement Between US West and SBC Telecom, Inc. dated 06/01/00

3. US West Service Level Agreement with Covad Communications Company

4. Confidential Billing Settlement Agreement Between US West and McLeodUSA dated 04/28/00

5. Escalation Procedures and Business Solution Letter from Qwest to Eschelon dated 11/15/00

6. Confidential Amendment to Confidential/Trade Secret Stipulation Between Qwest and Eschelon dated 11/15/00

7. Qwest/Eschelon Feature Letter dated 11/15/00

8. Qwest/Eschelon Implementation Plan Letter dated 11/15/00

9. Qwest/Eschelon Confidential Purchase Agreement dated 11/15/00

10. Status of Switched Access Minute Reporting Letter from Qwest to Eschelon dated 07/03/01

11. Third Amendment to Confidential/Trade Secret Agreement Between Qwest and Eschelon dated 07/03/01

12. Qwest/Eschelon Implementation Plan dated 07/31/01

13. Qwest/Eschelon Trial Agreement