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February 18, 2009

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702-5983

*Via Email: jean.jewell@puc.idaho.gov
and Via Overnight Delivery*

RE: Docket No. QWE-T-08-04

Dear Ms. Jewell:

Enclosed for filing please find the original and seven copies of Joint CLEC Responses to Staff's First Set of Data Requests in Arizona Docket Number T-01051B-08-0613, *In The Matter Of The Application Of Qwest Corporation To Withdraw Its Statement Of Generally Available Terms And Conditions*, before the Arizona Corporation Commission. Qwest also requested that the Arizona Commission allow Qwest to withdraw its SGAT. Arizona Staff issued data requests to CLECs, and the enclosed Joint CLEC responses set forth the view of those CLECs (including CLECs participating in this matter) as to why the state commissions in all of Qwest's states should reject Qwest's request.

In addition, with this letter, 360 networks, Level 3, PAETEC and Integra inform the Commission that they have no objection to bifurcating the PID/PAP issues from the SGAT issues.

Sincerely,

Jill M. Kowalczyk
Legal Secretary & Regulatory Assistant
Integra Telecom
763-745-8465 (Direct)
763-745-8459 (Dept. Fax)
jill.kowalczyk@integratelecom.com

Enc.

cc: See Attached Certificate of Service

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Joint CLEC Responses to Staff's First Set of Data Requests in Arizona Docket Number T-01051B-08-0613, *In The Matter Of The Application Of Qwest Corporation To Withdraw Its Statement Of Generally Available Terms And Conditions*, before the Arizona Corporation Commission was served on the 18th day of February, 2009 on the following individuals:

Via E-mail and Overnight Mail

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Jill M. Kowalczyk
Legal Secretary and Regulatory Assistant

BEFORE THE ARIZONA CORPORATION COMMISSION

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**KRISTIN K. MAYES, CHAIRMAN
SANDRA D. KENNEDY, COMMISSIONER
PAUL NEWMAN, COMMISSIONER
GARY PIERCE, COMMISSIONER
BOB STUMP, COMMISSIONER**

**IN THE MATTER OF THE APPLICATION)
OF QWEST CORPORATION)
TO WITHDRAW ITS STATEMENT)
OF GENERALLY AVAILABLE TERMS)
AND CONDITIONS)**

**DOCKET NO.
T-01051B-08-0613**

JOINT CLEC RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS

On approximately January 30, 2009, Staff submitted its First Set of Data Requests to 360networks (USA) inc. ("360networks"); DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"); Electric Lightwave, LLC. ("ELI"), Eschelon Telecom of Arizona, Inc. ("Eschelon") and Mountain Telecommunications of Arizona, Inc. ("MTI"), all d/b/a Integra Telecom ("Integra"); Level 3 Communications ("Level 3"); McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services ("PAETEC"); tw telecom of arizona llc ("tw"), and XO Communications Services, Inc. ("XO") (collectively referred to as "Joint CLECs"). The Joint CLECs submit the following objections and responses to Staff's First Set of Data Requests:

GENERAL OBJECTIONS TO ALL DATA REQUESTS

1. The Joint CLECs object to the Requests to the extent they are vague, over-broad and/or unduly burdensome.
2. The Joint CLECs object to the Requests to the extent they seek information subject to the attorney-client privilege, work product doctrine, or any other privilege recognized by the State of Arizona and information that is trade secret, confidential, sensitive, competitive in nature or proprietary.
3. The Joint CLECs object to the Requests to the extent that they seek information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence.
4. The Joint CLECs object to the Requests to the extent that they seek a legal conclusion.

RESPONSES

Subject to, and without waiving, the foregoing objections, the Joint CLECs provide the following Responses. The enclosed documents are incorporated by reference.

STF REQUEST NO. 1.1

Has CLEC made use of Qwest's Statement of Generally Available Terms ("SGAT") in the last five years? If yes, please (1) provide all approximate dates of such use; (2) the reasons for such use; and (3) whether such use included the participation of Qwest?

JOINT CLEC RESPONSE TO STF NO. 1.1:

Yes. Joint CLECs have made use of Qwest's SGAT in the last five years. The dates of Joint CLEC use of the SGAT include the entire five-year period and before.

Regarding the reasons for SGAT use, generally the Joint CLECs have used the SGAT as a key source to help frame interconnection agreement ("ICA") negotiation positions; as a resource for attempting to resolve disputes with Qwest such as in billing, carrier relations, and Change Management Process ("CMP") contexts;¹ and as an internal resource such as to confirm Commission-approved terms and filed requirements (such as Commission-approved rates, which are identified in SGAT Exhibit A, and PIDs/PAP requirements in SGAT Exhibits B and K). *See also* discussion in Idaho Level 3 and 360networks & PAETEC and Integra Comments² and Colorado Eschelon Brief.³

Some of the SGAT use included participation of Qwest and some did not. For example, negotiations and arbitration⁴ with Qwest based on SGAT language included Qwest participation (including Qwest advocating that SGAT language should be adopted in certain cases⁵). CLEC use of the SGAT for internal business purposes (*e.g.*, to verify Commission-approved rates in SGAT Exhibit A and operation of PIDs/PAP in SGAT Exhibits B and K) did not include Qwest participation.

¹ See, *e.g.*, CLEC Objection to Qwest's use of Non-CMP Notices that Change Rates and Application of Rates and attached example regarding Qwest's Multiple Collocation Rates notice, in which Qwest indicated that, for three rate elements specific to two types of collocation, Qwest would apply them more broadly to all types of collocation (Bates Nos. 1-13). After Integra objected and explained how these elements are used in the SGAT, Qwest said it would retract the notice "in favor of filing this change in upcoming cost dockets in each state." (Bates No. 12.) In other words, use of the SGAT was useful in resolving a dispute that otherwise may have come before the Commission outside of a cost docket.

² See *In the Matter of the Petition of Qwest Corporation Requesting Authorization to Withdraw its Statement of Generally Available Terms and Conditions*, Docket QWE-T-08-04, Comments of Level 3 and 360networks (July 3, 2008) (copy enclosed); Comments of Integra Telecom and PAETEC (July 8, 2008) (Bates Nos. 14-22); see also Comments of the Commission Staff (July 7, 2008) (Bates Nos. 41-45).

³ *In the Matter of the Petition Of Qwest Corporation for a Variance from the Requirement to Maintain a Tariff for the Resale and Wholesale Services It Provides to Other Telecommunications Carriers, Pursuant To 4 CCR 723-2-25-2(C)(V), 2504(I), 2506(A) through (D) (I) AND (E) AND 2585(A)* Docket No. 07V-171T, Legal Brief of Eschelon Telecom of Colorado, Inc. (August 31, 2007) (Bates Nos. 46-58); see also CO PUC Decision No. C07-1095 (59-76).

⁴ See, *e.g.*, "Qwest-Eschelon AZ ICA Arbitration," ACC Docket Nos. Docket Nos. T-03406A-06-0572; T-01051B-06-0572. Eschelon also used the SGAT (and Qwest's use of an ICB expedite rate in SGAT Exhibit A) in its Arizona expedite complaint case. See ACC Docket Nos. T-03406A-06-0257, T-01051B-06-0257.

⁵ See, *e.g.*, testimony of Mr. Easton of Qwest in Qwest-Eschelon AZ ICA Arbitration (quoted below in Joint CLEC Response to STF No. 1.4). (Bates Nos. 147-150.)

Further CLEC use of the SGAT in the last years – in particular, use of the SGAT for the purpose of opt-in – has been limited by Qwest’s unilateral announcement on November 15, 2006 that “SGATs are no longer available to opt into and have been replaced with the Negotiations Template Agreement (NTA).” See Qwest Level 1 CMP notice PROS.11.15.06.F.04322.MultLangChangeforSGATs (effective Nov. 15, 2006) (Bates Nos. 77-78).

Although the Commission recently confirmed that the SGAT remains “available for opt-in,”⁶ Qwest in reality does not make it available for opt-in and has not for a period of years, despite the Commission’s earlier order.⁷ Therefore, CLEC use of the SGAT has been limited to using the SGAT primarily as “reference documents”⁸ not by choice in every case but because that is the only use that Qwest unilaterally allowed.

Before Qwest’s unilateral announcement, CLECs in Arizona opted in to the SGAT, including Qwest’s affiliate, Qwest Communications Corporation. See, for example:

Interconnection Agreements between Qwest Corporation and CityNet Arizona, LLC effective January 26, 2004 by Decision No. 66756; IDT America, Corp. effective January 26, 2004 by Decision No. 66754; Sprint Communications Company, LLP effective April 15, 2004 by Decision No. 66929; Qwest Communications Corporation effective December 20, 2004 by Decision No. 67473; SBC Long Distance effective October 14, 2004 by Decision No. 67374; Telscape Communications, Inc. effective April 15, 2004 by Decision 66931; WilTel Communications, LLC effective January 26, 2004 by Decision No. 66755.

Level 3 has continued to request opt-in of the SGAT and has been allowed to opt-in in Montana. See Order Granting Motion to Withdraw Petition for Arbitration and to Opt Into Qwest’s “SGAT,” MT Docket No. D2005.12.174, Order No. 6715a (Aug. 1, 2007) (Bates Nos. 80-87). A decision has not yet been issued in South Dakota. See Level 3 Comments in Reply to Qwest’s Response, SD Docket No. TC06-007 (July 23, 2007) (Bates Nos. 88-97).

Respondent: Douglas Denney, Integra - Joint CLEC Witness

⁶ ACC Docket Nos. T-03406A-06-0257, T-01051B-06-0257, Decision No. 70557 (Oct. 23, 2008), p. 28, lines 10-11.

⁷ See 271 Opinion and Order, Arizona Decision No. 66201 in ACC Docket No. T-00000A-97-0238 (Aug. 25, 2003) [“ACC Decision No. 66201”], p. 28 (“It is further ordered that Qwest Corporation’s SGAT, as modified from time to time after Commission approval, *shall remain available, as the standard interconnection agreement, until the Commission authorizes otherwise.*”) (emphasis added).

⁸ See 12/5/06 Email by Qwest’s Wholesale CMP (Lynn Stecklein) (quoted in Response to STF No. 1.3 below) (copy enclosed). (Bates No. 79.)

