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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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UTILITIES COMMISSION

**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.)

STF REQUEST NO. 1.2

Has CLEC ever requested that Qwest update its SGAT in the last five years? If yes, (1) please explain when such requests were made; and (2) if such requests were made in writing please provide copies of any corresponding communications.

JOINT CLEC RESPONSE TO STF NO. 1.2:

In its November 29, 2006 objection to Qwest's notice to CLECs that the SGAT would no longer be available for opt-in (see Joint CLEC Response to STF No. 1.3), Eschelon said: "Qwest should have been updating the SGATs (as it has indicated on several occasions it would do) and it should not withdraw them without Commission approvals." (Bates No. 80.)

Because Qwest was promising to CLECs that it *would* update the SGAT virtually until the time that Qwest announced it would no longer make the SGAT available for opt-in, there was no known need to ask Qwest to update the SGAT (*i.e.*, something Qwest had already committed to do). For example, in January 2005, Qwest said to 360networks: "we are not allowing opt-in to the SGATs *until the SGATs have been re-filed with the States to be compliant with current law*" (emphasis added; Bates No.98).

See also, *e.g.*, from Qwest-Eschelon AZ ICA Arbitration, Hrg. Ex. E-8 (Starkey Surrebuttal), pp. 31, line 12 – 32, line 12 (Bates Nos. 108-109):

Furthermore, Qwest has said over time that changes will be made in conjunction with SGAT updates. Qwest has taken this position in CMP, through its service management team, and in ICA negotiations.

On June 30, 2005, Qwest committed to CLECs in CMP:

*'... as SGAT language changes, we will have a comment period and that the States will engage you when decisions are made. Cindy also said that PCAT changes will be brought through CMP.'*¹³¹

On March 29, 2006, Qwest service management similarly told Eschelon:

*'As agreed to at CMP, the PCATs/Business Procedures associated specifically to TRRO are handled outside the scope of CMP until such time that there is an approved SGAT, which is why the change was noticed as a non-CMP document.'*¹³²

On April 6, 2006, the Qwest ICA negotiations team similarly told Eschelon:

*'From those discussions it was agreed that until such time that a SGAT is filed and the TRRO related issues were finalized that all of the TRRO processes and issues would be deferred from a CMP perspective.'*¹³³

¹³¹ Exhibit BJJ-7, pp. 8-9 (6/30/05) (emphasis added). [Bates No. 114-115.]

132 Exhibit BJJ-7, p. 11.

133 Exhibit BJJ-7, p. 12 (4/6/06) (emphasis added). . . . [Bates No. 116.]

Respondent: Douglas Denney, Integra - Joint CLEC Witness

STF REQUEST NO. 1.3

Did Qwest send your Company a notice through its Change Management Process ("CMP") or another process that it was withdrawing its SGAT in Arizona? If yes, please attach a copy of the notice.

JOINT CLEC RESPONSE TO STF NO. 1.3:

Qwest sent a notice to certain CLECs (that were signed up to receive CMP notices/emails) 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). Qwest did not state in the notice that it was "withdrawing" its SGAT (though, in effect, Qwest withdrew it from opt-in availability as a practical matter), and Qwest did not ask the Commission for approval to withdraw it.

Although Qwest inappropriately chose to use a Level 1 notice (which does not allow for comments/objections), Eschelon objected in CMP to Qwest's CMP notice (Bates No. 79). Qwest's Wholesale CMP (Lynn Stecklein) responded on 12/5/06 that: "Qwest will not withdraw the notice and will not be republishing the duplicate SGATs. SGATs have not been withdrawn and continue to be available *as reference documents* via the Quick Links located on the right side of the wholesale web page. The Negotiations Template Agreement which incorporates provisions of the SGATs is the starting point for a CLEC wanting to enter into an interconnection agreement with Qwest"⁹ (emphasis added) (Bates No. 79).

Even before Qwest sent its 11/15/06 CMP notice, Qwest had said it did not "allow" opt-in to the SGAT. In a 1/12/05 email to 360networks, Qwest said: "we are *not allowing opt-in to the SGATs* until the SGATs have been re-filed with the States to be compliant with current law" (emphasis added; Bates No. 98). That was during the time period when Qwest was still representing to CLECs that it would update the SGAT to reflect the TRO/TRRO and file the revised SGATs with the state commissions for approval.¹⁰ (See Joint CLEC Response to STF No. 1.2.)

On January 10, 2008, Qwest distributed a non-CMP notice to CLECs entitled "Multiple PCAT correction for SGAT" in which Qwest said the purpose of the multiple changes to its Product Catalog ("PCAT") was "*to eliminate the Statement of Generally Available Terms and Conditions (SGAT) links and references.*" See Qwest non-CMP notice PROS.01.10.08.F.05142.SGAT_updt_Collo_Overviews (effective Jan. 11, 2008) (emphasis added; Bates Nos. 119-120). Although it was a non-CMP notice (so there is no formal objection opportunity), Eschelon objected, stating: "Regarding the enclosed notice, it is unclear to us what it means. It appears to be further unilateral action by Qwest to withdraw the SGATs without going to the Commission. In Arizona, for

⁹ Compare ACC Decision No. 66201, p. 28 ("It is further ordered that Qwest . . . SGAT . . . shall remain available, *as the standard interconnection agreement* . . .") (emphasis added).

¹⁰ Qwest knew it should modify the SGAT and seek Commission approval for the modifications. See ACC Decision No. 66201, p. 28 ("It is further ordered that Qwest . . . SGAT, *as modified from time to time after Commission approval*, shall remain available . . .") (emphasis added).

example, the Staff said in its recent brief in ACC Docket No. T-03406A-06-0257 (p. 35): 'Qwest has effectively withdrawn its Arizona Statement of Generally Available Terms and Conditions ('SGAT') in violation of a Commission Order. Commission Decision No. 66201 required Qwest to obtain Commission approval prior to withdrawing its SGAT.' Please explain why Qwest is not going to the Commissions first before taking steps to further reduce access and references to the SGATs" (Bates No. 121).

Respondent: Douglas Denney, Integra - Joint CLEC Witness

STF REQUEST NO. 1.4

It is the Commission Staff's understanding that Qwest is now utilizing a template interconnection agreement that has not been approved by the Commission. Should the Commission require Qwest to file its template interconnection agreement with the Commission for approval in lieu of requiring Qwest to update its SGAT? If not, why not?

JOINT CLEC RESPONSE TO STF NO. 1.4:

No, particularly not "in lieu of requiring Qwest to update its SGAT." Qwest's unilaterally developed web-posted template negotiations *proposal* is no substitute for the collaboratively developed SGAT. Although Qwest claims that its negotiations template proposal "incorporates provisions of the SGATs,"¹¹ to the extent that is the case, those provisions are already available via the publicly filed SGAT. The remainder of the Qwest negotiations template proposal is Qwest's "wish list" of ICA terms. It is merely Qwest's going-in position for negotiations. Each CLEC has a right to propose its own going-in position for ICA negotiations. Qwest nonetheless has refused to work from those proposals (even when the CLEC proposal is the existing ICA between the parties¹²) and insists that its own proposal must be "the starting point *for a CLEC* wanting to enter into an interconnection agreement with Qwest."¹³ In contract negotiations, a company generally does not go to the table and say to the opposing party "let's start with your proposal." A CLEC's negotiations proposal should be given no less weight than Qwest's negotiations proposal.

Any filing of the Qwest negotiations template carries with it the risk that Qwest's template will then be given more weight than a CLEC's negotiations proposal on any given issue, simply because the Qwest proposal has been filed with the Commission. In no event should Qwest's negotiations template proposal be viewed as a default ICA. Because the SGAT has been, as a practical matter, unavailable for opt-in (due to Qwest's unilateral announcement), Qwest already maintains an advantage in negotiations, to the extent that its resources to arbitrate are greater than those of a particular CLEC, because Qwest can force a CLEC into time-consuming and costly arbitration rather than offer any term different from its negotiations template (including SGAT terms that vary from the template). This advantage would be even greater if, once the disputed issues are arbitrated before the Commission, Qwest's template language is given any kind of preference or inference of validity due to its having been filed with the Commission.

¹¹ See 12/5/06 Email by Qwest's Wholesale CMP (Lynn Stecklein) (quoted in Response to No. 1.3) (copy enclosed). (Bates No. 79.)

¹² See, e.g., McLeod (now PAETEC) Petition for Mediation, MPUC Docket No. P-5323,421/M-07-609, p. 1 (Bates Nos. 123-132); Qwest-Eschelon AZ ICA Arbitration, Hrg. Ex. E-7 (Starkey Rebuttal), p. 154, lines 8-10 ("Eschelon's initial proposal was to use the parties' existing approved interconnection agreement as a starting point for negotiations").

¹³ See 12/5/06 Email by Qwest's Wholesale CMP Manager (Lynn Stecklein) (quoted in Response to No. 1.3) (Bates No. 79); see also Qwest current web page ("A CLEC or Reseller may use the Negotiations Template Agreement to serve as the starting point for negotiations for an Interconnection Agreement.") at <http://www.qwest.com/wholesale/clecs/negotiations.html> (Bates No. 133.)

Per Section 252(i) of the 1996 Act, the filed and approved ICAs (including ICAs based on the SGAT) are available for opt-in (*not* one party's negotiation positions). The Act provides that Qwest may file a negotiated or arbitrated ICA for Commission approval [Section 252(a)], and Qwest may file an SGAT for Commission approval and subject to continuing Commission review [Section 252(f)]. As Qwest is the only party to its template proposal (*i.e.*, by itself the template is not negotiated or arbitrated), a filing of Qwest's template proposal does not fall with Section 252(a). To the extent that Qwest would file its negotiations template proposal as a "statement of the terms and conditions that such company generally offers" within Arizona under Section 252(f)(1), there is already such a statement in place (*i.e.*, the SGAT). Therefore, any such Qwest filing would fall within Section 252(f)(4) (Authority to Continue Review), and the burden would be on Qwest to identify each proposed change to the existing SGAT and to establish why each one complies with Sections 252(d) and 251 and the regulations thereunder. Section 252(f)(2) provides that the Commission "may not approve" a filing without finding that those standards have been met. The current SGAT was subject to workshops and other proceedings before the Commission made the requisite determination. Before engaging in such a review, the Commission should consider the timing (particularly in these economic times), burden, and other factors affecting such a proceeding (see also Joint CLEC Response to STF Request No. 1.11) and consider the reasonableness of Joint CLECs' position that instead the SGAT should remain available for opt-in, subject to its change in law provision (see Joint CLEC Response to STF Request No. 1.5).

Regarding timing, as well as the suitability of Qwest's negotiations template for filing under Section 252(f)(1), the Commission should consider that Qwest previously rejected offers to collaboratively develop the template terms. As stated in the testimony of Eschelon's witness in the Qwest-Eschelon AZ ICA Arbitration (Hrg. Ex. E-7, Starkey Rebuttal, p. 40, lines 1-11) (Bates No. 103):

Qwest soundly rejected two opportunities for input from all interested carriers in this very negotiation and arbitration as well as in CMP. First, Eschelon asked Qwest to agree to coordination and participation of other CLECs in these ICA negotiations, but Qwest said no.¹⁴ Second, Eschelon asked Qwest to use CMP to allow CLECs to have input into development of its new template and for Qwest to provide status information to CLECs about the template, but Qwest also flatly rejected the offer, indicating that "this is not a CMP issue."¹⁵ Both of these offers show that Eschelon welcomed multiple CLEC participation. In contrast, despite Qwest's many claims of concern about other CLECs,¹⁶ Qwest would not agree to

¹⁴ [Starkey footnote 135] See, *e.g.*, Exhibit BJJ-25 (Qwest-Eschelon letter exchange dated Sept. 23, 2003, Oct. 9, 2003, Oct. 17, 2003). [Bates Nos. 135-143.]

¹⁵ [Starkey footnote 136] Exhibit BJJ-24 (Qwest Feb. 4, 2003 email). [Bates Nos. 144-146.]

¹⁶ [Starkey footnote 137] The Commission should be extremely skeptical of Qwest's implication that it is acting out of a desire to somehow "protect" other CLECs. As the FCC has observed: Incumbent LECs have little incentive to facilitate the ability of new entrants, including small entities, to compete against them and, thus have little incentive to provision unbundled elements in a manner that would provide efficient competitors with a meaningful opportunity to compete. We are also cognizant of

participation of other CLECs regardless of the context – negotiation, arbitration, or CMP.

In contrast to Qwest’s unilateral approach to developing its template, Qwest admits that the language in the SGAT was developed collaboratively. See, e.g., Qwest-Eschelon AZ ICA Arbitration, Hrg. Ex. Q-5 (Easton Direct), p. 14, lines 8-9 (the “language in the SGAT . . . was developed by the CLECs and Qwest during the Section 271 workshops and approved by the Commission”) (Bates No. 148.); Hrg. Ex. Q-8 (Easton Surrebuttal) (“billing issues were discussed at length during the 271 process and, where possible, CLECs and Qwest reached consensus on the billing language. Where consensus was not possible, an arbitrator examined the parties’ positions and recommended language.”) (Bates No. 150.).

As indicated in Joint CLEC Response to STF No. 1.1, Joint CLECs have used the collaboratively developed SGAT as a resource in formulating negotiation positions in response to Qwest’s unilaterally developed negotiations template. For example, Eschelon individually expended substantial time and resources to review contract language, including the SGAT, the Qwest-AT&T contract (which was based upon the SGAT, with modifications), and when available the Qwest template proposal, to formulate, negotiate, and arbitrate its new Arizona ICA (pending approval). Meantime, Eschelon’s now affiliated entity Electric Light Wave (“ELI”) is in ICA negotiations with Qwest in which ELI had to expend the resources to redline the Qwest template, as Qwest insists on use of its template as a starting point for negotiations, and did not use the recently arbitrated Arizona Qwest-Eschelon ICA, despite the work of both parties on that document. While Eschelon’s preference – and the approach it advocated to Qwest (see above) – would have been to participate in a multi-CLEC and Qwest forum at that time, Qwest refused to cooperate in that approach, and time-consuming and costly individual efforts were necessary. If, at this late date, the negotiations template is litigated before the Commission, Eschelon and ELI (like other CLECs in this position) are faced with the prospect of having to either (1) expend additional resources for issues already negotiated or arbitrated or (2) not participate to save resources and risk that erroneous or unsuitable template provisions are approved (more because they are unopposed than that they are valid) and thus become virtually impossible to defeat when the time comes to arbitrate any open issues remaining after negotiations between ELI and Qwest.

Qwest’s choice to unilaterally declare the SGAT unavailable for opt-in,¹⁷ despite a Commission order that it be available for opt-in,¹⁸ should not be rewarded by allowing Qwest’s conduct to become a self-fulfilling prophecy so that, now, the SGAT is no longer

the fact that incumbent LECs have the incentive and the ability to engage in many kinds of discrimination. For example, incumbent LECs could potentially delay providing access to unbundled network elements, or they could provide them to new entrants at a degraded level of quality. *First Report and Order*, ¶ 307.

¹⁷ Qwest Level 1 CMP notice PROS.11.15.06.F.04322. MultLangChangeforSGATs (effective Nov. 15, 2006) (Bates Nos. 77-78).

¹⁸ 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).

available and is replaced by Qwest's template. The SGAT should remain available for opt-in, subject to its change in law provision. (See Joint CLEC Response to STF Request No. 1.5.) Changes in law may be dealt with individually by amendment. (See *id.*) If, however, a generic proceeding is initiated to review generally available terms, the basis for review in that proceeding should be the current SGAT and whether it requires any specific modifications, and *not* Qwest's template proposal. (See Joint CLEC Response to STF Request No. 1.11.)

Despite CLEC requests, Qwest does not post the filed and approved ICAs that are available for opt-in on its wholesale web page.¹⁹ (In fact, Qwest recently removed from its web-page the little posted information about filed ICAs that been on its web page.²⁰) Instead, Qwest posts its own negotiations template proposal.²¹ Although filed and approved ICAs are maintained on the Commission's website, they appear to be organized by company and are not always easy to identify and locate when determining which ICAs are available for opt-in in Arizona. The Commission should either require Qwest to maintain Arizona ICAs available for opt-in (in a searchable format) in a central, readily identifiable location on Qwest's web page, or the Commission should post a list of ICAs available for opt-in in a central place on its own website (making them easier to locate on that site), or both.

Respondent: Douglas Denney, Integra - Joint CLEC Witness

¹⁹ PROS.01.09.09.F.05946.ProvisionsAvail_forOpt_In, Qwest Level 2 CMP Notice (Effective Jan. 30, 2009) at p. 1: CLEC Comment (Integra requests Qwest post ICAs available for opt in) (Bates No. 166) and Qwest Response ("Qwest will not be posting the Interconnection Agreements as has been expressed previously") (Bates No. 166).

²⁰ PROS.01.09.09.F.05946.ProvisionsAvail_forOpt_In, Qwest Level 2 CMP Notice (Effective Jan. 30, 2009) (Bates No. 167-169).

²¹ See <http://www.qwest.com/wholesale/clecs/negotiations.html> (Bates No. 133).

STF REQUEST NO. 1.5

Do you believe that the continued availability of an updated SGAT or template ICA in Arizona is beneficial or still important? Please explain your answer.

JOINT CLEC RESPONSE TO STF NO. 1.5:

Continued availability of the SGAT in Arizona is beneficial and important to promoting competition. To the extent that Qwest is claiming that the SGAT is out-of-date and needs to be “updated” because Qwest prefers other language at this point in time, that is not a valid basis on which to make the SGAT unavailable. To the extent that Qwest is claiming that the SGAT is out-of-date due to changes in law, the SGAT already accounts for changes in law. (See AZ SGAT §2.2.) The Commission should confirm that the SGAT remains available for opt-in in Arizona, subject to its change in law provision. SGAT Section 2.2 provides (with emphasis added) that, in the event of a change in law, “this Agreement *shall be* amended to reflect such legally binding modification or change of the Existing Rules.” Therefore, any CLEC that opts in to the SGAT may do so with an amendment to reflect changes in law.

The TRO/TRRO represents a change in law. In the wire center docket (ACC Docket Nos. T-03632A-06-0091, T-03267A-06-0091, *et al.*, Decision No. 70355), the Commission approved a settlement agreement that requires Qwest to make generally available to all other requesting CLECs the TRO/TRRO ICA language that is attached to the settlement agreement as Exhibits B, C, and D. [See Exhibit A to Decision No. 70355, Multi-State Settlement Agreement, at ¶VII(A)(4), p. 15 of 18.]²² Therefore, any CLEC may request to opt into the SGAT, along with the TRO/TRRO settlement agreement language already generally available to it, to “update” the SGAT to reflect the change in law. The CLEC will then have an ICA that is up-to-date with respect to the TRO/TRRO changes in law.²³ If Qwest or the CLEC identifies other changes in law, SGAT Section 2.2 requires that those changes in law be included in an amendment(s) as well, and they may be negotiated or arbitrated with each CLEC accordingly.

The Commission should require Qwest to issue a Level 1 CMP notice that reverses Qwest’s Level 1 CMP notice PROS.11.15.06.F.04322.MultLangChangeforSGATs (effective Nov. 15, 2006) (Bates No. 77-78). Qwest should be required to send the notice to all CLECs in Arizona. The Commission should require that the notice state that the Arizona SGAT is available for opt-in in Arizona, subject to the SGAT’s change in law

²² In Decision No. 70355 (p. 34), the Commission ordered that the settlement agreement does not bind any party that is not a signatory and that non-party CLECs retain all their rights pursuant to Sections 251 and 252 of the 1996 Act. Therefore, while CLECs have the right to accept the TRO/TRRO language in Exhibits B, C, or D to the settlement agreement, they do not have to do so and may negotiate or arbitrate different TRO/TRRO language to amend the SGAT.

²³ Several CLECs (including Covad and XO) had signed TRO/TRRO amendments with Qwest before entering into the settlement agreement, and Exhibit B to the settlement agreement modifies those earlier amendments. See Exhibit A to Decision No. 70355, at ¶VII(A)(1)(a), p. 14 of 18. Therefore, a CLEC opting into the SGAT, as amended by the Covad or XO TRO/TRRO amendment, as modified by Exhibit B, would have an ICA that is “updated” to reflect the TRO/TRRO changes in law.

provision. Qwest does not post Exhibits B, C, and D of the settlement agreement on its web page as available ICA language, despite requests to post them.²⁴ The Commission should also require that the notice make clear that, while CLECs are not obligated to accept it, the TRO/TRRO language in Exhibits B, C, and D of the settlement agreement is available to them for purposes of amending the SGAT to reflect TRO/TRRO changes in law. Because Qwest posts its own template TRO/TRRO amendment on its website, Qwest should also be required to post Exhibits B, C, and D of the approved settlement agreement on its website, in the same location (or, alternatively, to include them as attachments to the CMP notice), so that CLECs know their rights and have the language of Exhibits B, C, and D available to them for consideration when opting-in to the SGAT as amended for change in law.

Qwest frames the issue as the SGAT is out-of-date so it should not be available for opt-in. Qwest's position ignores the SGAT's change in law provision, which allows opt-in of the SGAT, as amended to reflect changes in law. The SGAT does not have to be "updated" to reflect those changes in law in a generic proceeding, particularly as in these economic times carriers do not have the resources to participate in a Commission proceeding to update it at this late date (when Qwest failed to do so in a timely manner). (See Joint CLEC Response Nos. 1.5 & 1.11.) Section 252 of the 1996 Act contains mechanisms for negotiation and arbitration of changes in law. Those mechanisms, combined with the SGAT's requirement that it "shall" be amended for changes in law, allow CLECs to opt-in to the SGAT while protecting Qwest's desire to "update" the SGAT to reflect changes in law in each case.

The Qwest template ICA proposal is not a substitute for the SGAT and its availability as a substitute for the SGAT would not be beneficial. The Commission should (1) confirm that the SGAT remains available, subject to its change in law provisions, and (2) expressly reject Qwest's template ICA proposal as any kind of SGAT replacement or "standard" ICA, along with expressly stating that there is no presumption of validity or compliance associated with Qwest's template ICA proposal (see Joint CLEC Response to STF No. 1.11.).

²⁴ In response to CLEC requests to post the settlement agreement exhibits, Qwest sent a one-time notice to "Select CLECs" in Arizona notifying them of the availability of the wire center language. See GNRL.06.03.08.B.004102.AZ_Wire_Cntr_Stt_Agree (June 3, 2008) (Bates Nos. 151-152, along with email exchange, Bates Nos. 153-165). Qwest's service managers, rather than directing CLECs to this particular notice, direct CLECs seeking a TRRO amendment to Qwest's web page. Qwest's web page contains, as available language, Qwest's TRRO amendment, but *not* Exhibits B, C, and D of the settlement agreement, even though the approved settlement agreement requires Qwest to make generally available to all other requesting CLECs the TRO/TRRO ICA language that is attached to the settlement agreement as Exhibits B, C, and D. [See Exhibit A to Decision No. 70355, Multi-State Settlement Agreement, at ¶VII(A)(4), p. 15 of 18.]

When discussing the opt-in provision [when an SGAT is in place] under Section 252(i), the FCC said:

We conclude that the nondiscriminatory, pro-competitive purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement.²⁵

Respondent: Douglas Denney, Integra - Joint CLEC Witness

²⁵ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Before the Federal Communications Commission, CC Docket No. 96-98, Aug. 8, 1996, ¶337.

STF REQUEST NO. 1.6

If Qwest's template interconnection agreement is not subject to Commission approval, what if any, impact will that have on your Company's ability to negotiate favorable ICA terms and conditions with Qwest? Please explain your answer.

JOINT CLEC RESPONSE TO STF NO. 1.6:

Provided that the SGAT remains available for opt-in subject to its change in law provision and Qwest's template negotiations proposal is not given any special status or accorded any inference of validity (more than any other party's going in negotiations positions), CLECs' ability to negotiate ICA terms and conditions will be less disadvantaged than if the SGAT is withdrawn or the Qwest template proposal is accorded special status. (See Joint CLEC Response Nos. 1.4, 1.5 & 1.11.)

Respondent: Douglas Denney, Integra - Joint CLEC Witness

STF REQUEST NO. 1.7

Should Qwest be required to file any of the attachments to Qwest's Arizona SGAT with the Commission for approval? Should Qwest be required to seek Commission approval before it withdraws any of the attachments to its SGAT?

JOINT CLEC RESPONSE TO STF NO. 1.7:

Yes. Qwest should be required to continue to file updated Exhibit A (rates), Exhibit B (Performance Indicator Definitions, or "PIDs") and Exhibit K (Performance Assurance Plan, or "PAP") to the SGAT with the Commission for approval,²⁶ regardless of whether the SGAT is maintained or withdrawn. Qwest should be required to seek Commission approval before it withdraws any of the exhibits/attachments to its SGAT.²⁷ (See also Joint CLEC Response to STF No. 1.8.)

Although Qwest, without prior Commission approval, stopped updating the body of the SGAT in 2003,²⁸ Qwest continued to update Exhibits A, B and K to reflect Commission decisions. Qwest's web page indicates a date of February 10, 2005 for SGAT Exhibit A.²⁹ Exhibits B and K were most recently updated on June 19, 2008³⁰ as a result of Commission Decision No. 70386³¹ in Qwest's Performance Assurance Plan Docket.

It is crucial that CLECs have a publicly available, readily accessible source of Arizona Commission ordered rates, as well as Commission ordered terms to Qwest's PAP and corresponding PIDs. Because Qwest makes these filings (and posts these exhibits on its web page, albeit currently only as alleged "reference" documents), disputes are eliminated or minimized because CLECs may point to the Qwest filings (and Qwest web postings) as evidence that the Commission-approved information in these exhibits is *undisputed*.

While, at this time, Qwest's negotiations template proposal contains the latest Commission approved Exhibits B and K, the Qwest template does *not* include the latest

²⁶ Some of the other Exhibits are updated as set forth in the SGAT. See, e.g., SGAT §12.2.6 ("Exhibit G will be subject to change through the CMP process, as set forth in the CMP Document. Qwest will maintain the most current version of the CMP Document on its wholesale website.").

²⁷ See 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).

²⁸ Arizona 14th Revised SGAT, effective 10/29/03.

²⁹ http://www.qwest.com/about/policy/sgats/SGATsdocs/arizona/AZ_14th_Rev_3rd_Amend_Exh_A_2_10_05_Clean.pdf

³⁰ *Notice of Filing*, In the Matter of Qwest Corporation's Performance Assurance Plan, Docket No. T-01051B-03-0859, June 19, 2008.

³¹ *Order Decision No. 70386*, In the Matter of Qwest Corporation's Performance Assurance Plan, Docket No. T-01051B-03-0859, June 13, 2008, p. 15, lines 2-5: "IT IS THEREFORE ORDERED that Qwest Corporation shall file with Docket Control, as a compliance item in this docket, revised Exhibits K and B to its Arizona SGAT consistent with the Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions filed on June 22, 2007, within 30 days of the effective date of this Decision."

Commission approved Exhibit A. For certain rate elements in Exhibit A of Qwest's negotiations template, Qwest has chosen to ignore or eliminate Commission approved rates and instead insert rates reflecting Qwest's negotiations position.³² Because, on the surface, Qwest's negotiations template Exhibit A looks similar to the SGAT Exhibit A, CLECs looking to these documents may be confused by Qwest's approach and erroneously believe that Exhibit A to Qwest's negotiations template reflects this Commission's decisions regarding rates.

Qwest agreed and the Minnesota Commission required³³ Qwest to identify Minnesota Commission approved rates that are different from rates contained in Qwest's negotiations template.³⁴

Respondent: Douglas Denney, Integra - Joint CLEC Witness

³² For example, see Qwest Negotiations Template Exhibit A at §§7.9 (transit), 9.6.8 and 9.23.6.6 (multiplexing), 9.9 (UCCRE) and 9.20.14 (Expedites). Note, this is not an exhaustive list of differences, but only a sample of some of the issues.

³³ Order Approving Stipulation, with Clarification, *In the Matter of Qwest's Application for Commission review of TELRIC Rates Pursuant to 47 U.S.C. § 251*, MPUC Docket No. P-421/AM-06-713, Issued September 18, 2008, Stipulation and Agreement, p. 7.

³⁴ For example, footnote 7 in §7.9 (transit) of Qwest's MN SGAT Exhibit A (<http://www.qwest.com/about/policy/sgats/MN.html>) reads: "This Rate varies from the rate listed in the Negotiations Template."

STF REQUEST NO. 1.8

What are the ramifications with respect to the attachments to Qwest's SGAT (including the QPAP), if it is no longer a part of a Commission approved SGAT or template interconnection agreement?

JOINT CLEC RESPONSE TO STF NO. 1.8:

The lack of a reliable source of Commission approved rates (Exhibit A) and Commission approved PID/PAP terms (Exhibits B and K), *see* Joint CLEC Response to STF No. 1.7, further skews the advantage in negotiations away from CLECs and toward Qwest.

Particularly because of Qwest's generally greater resources and its participation in all Qwest proceedings, the lack of a clear source of compliance filings for Commission orders for rates and/or the PID/PAP heavily favors Qwest to the disadvantage of CLECs in negotiation. Eliminating SGAT Exhibits A, B and K would allow Qwest to effectively ignore Commission orders in favor of Qwest's preferred rates and performance measurement terms when negotiating with CLECs, in a manner in which the difference between Qwest's position and the Commission's order would be obscured. If a CLEC agrees to a rate or performance term different from the SGAT, it should be because the CLEC makes an informed decision to do so and not because the Commission's order is obscured. Compliance filings are often used to clearly delineate the principles outlined in an order. Without ready access to the compliance filing in the form of exhibits to the SGAT, disputes about the terms of the Commission's previous orders are more likely.

Qwest should not be allowed to in effect alter a Commission-order as a result of limiting information available to CLECs regarding the implication of Commission decisions.

Ramifications of allowing Qwest to withdraw attachments/exhibits to the SGAT are evident from the manner in which Qwest has deviated from the SGAT attachments in its template negotiations proposal. (Regarding differences in rates, see Joint CLEC Response to STF No. 1.7.) Qwest dictates which attachments and exhibits to the SGAT it will make available to CLECs as part of its template (which it requires CLECs to use as a "starting point" for negotiations³⁵). For example, Section 1.7 of the SGAT contains procedures and interim procedures for new products, and it refers to Exhibit L (Advice Adoption Letter) and Exhibit M (Interim Advice Adoption Letter). Eschelon recently relied upon this SGAT language and pointed out the advantages of these streamlined procedures in its arbitration with Qwest, in which Eschelon modeled its proposal for intervals after the language in Section 1.7.³⁶ The Commission adopted Eschelon's proposal for this Issue (1-1).³⁷ Qwest, however, has completely deleted Section 1.7 and Exhibits L and M from its negotiations template (with no reference to their ever having been in the SGAT). Qwest's template states that Section 1.7 is "intentionally left blank."

³⁵ See Joint CLEC Response to STF No. 1.3.

³⁶ See, e.g., Qwest-Eschelon AZ ICA Arbitration, Hrg. Ex. E-7 (Starkey Rebuttal), pp. 48-50. (Bates Nos. 104-106)

³⁷ Qwest-Eschelon AZ ICA Arbitration, Decision No. 70356, p. 7, lines 3-4.

Similarly, for Exhibit G [the Change Management Process (CMP) Document], Qwest's template states "intentionally left blank." Although, at this time, the body of Qwest's template refers to CMP (e.g., Section 12.2.6), that language does not contain key provisions of the CMP Document (such as the requirement in CMP Document Section 2.1 of a unanimous vote to change the CMP Document). If it is not clear that the existing CMP Document, as modified only by a unanimous vote, is part of the ICA, Qwest may argue that it is not bound by the ICA to terms in the CMP Document that it agreed to for the purpose of gaining authority to enter into the long distance market, even though it now enjoys the benefits of having entered that market.

Respondent: Douglas Denney, Integra - Joint CLEC Witness

STF REQUEST NO. 1.9

Qwest was required by a prior Commission order to obtain Commission approval before it withdraws its SGAT in Arizona. Qwest recently filed for formal approval from the Commission to withdraw its SGAT that is on file with the Commission in Arizona. Does your Company oppose such approval by the Arizona Corporation Commission? If yes, please explain your answer.

JOINT CLEC RESPONSE TO STF NO. 1.9:

Yes. The Joint CLECs recommend against allowing Qwest to withdraw the SGAT. The SGAT should remain available for opt-in subject to its change in law provision, and Qwest should be required to continue to file updated Exhibits A, B, and K to the SGAT for approval. (See Joint CLEC Response Nos. 1.4, 1.5, 1.7-1.9 & 1.11.)

Respondent: Douglas Denney, Integra - Joint CLEC Witness

STF REQUEST NO. 1.10

If the Commission were to order Qwest to file its template interconnection agreement with the Commission for approval in place of its current SGAT, does CLEC believe that modifications to the template interconnection agreement would be appropriate or necessary? If yes, please explain your answer.

JOINT CLEC RESPONSE TO STF NO. 1.10:

Yes. Joint CLECs believe that extensive modifications to Qwest's template proposal would be needed. Section 252(f)(2) provides that the Commission "may not approve" a filing of generally available terms without finding that the standards of Sections 252(d) and 251 and the regulations thereunder have been met. Qwest has made no showing that its going in negotiation positions in its template meet those standards. Even assuming any CLECs have voluntarily entered into some or all of Qwest's template terms, voluntary negotiations are measured by the standard of Section 252(a) and therefore do not provide a basis to conclude that the terms meet the standards of Sections 252(d) and 251 and the regulations thereunder.

Respondent: Douglas Denney, Integra - Joint CLEC Witness

STF REQUEST NO. 1.11

If the Commission was to order Qwest to file its template interconnection agreement with the Commission for approval, what process would your Company recommend for Commission review and modification of the document?

JOINT CLEC RESPONSE TO STF NO. 1.11:

Joint CLECs recommend rejection of the Qwest negotiations template ICA proposal. There should be no presumption of validity or compliance associated with Qwest's going-in negotiations positions in this proceeding or in ICA arbitrations. (See Joint CLEC Response to STF No. 1.4.) An express rejection of Qwest's template proposal as any kind of SGAT replacement or "standard" ICA, along with an express statement that there is no such presumption associated with it, would assist in leveling the playing field in ICA negotiations and arbitrations, where currently Qwest attempts to shift the burden to CLECs to disprove Qwest template proposals, to the extent that Qwest will negotiate them at all.³⁸ (See *id.*)

If the Commission nonetheless orders Qwest to file its negotiations template ICA proposal, the Commission should require Qwest to, at a minimum, identify each difference from the SGAT, state the basis for each change (including specific citations to legal authority), identify each template provision that a CLEC(s) has requested to modify, identify any ICAs or ICA amendments containing agreed upon modifications, and identify each template provision that has been rejected or modified by a state commission (*e.g.*, Qwest language proposals based on its template that the Commission rejected in ICA arbitrations). The Staff should then review the filed information, conduct discovery of Qwest as needed, and make recommendations based on the applicable legal standards and public policy. Section 252(f)(2) provides that the Commission "may not approve" a filing of generally available terms without finding that the standards of Sections 252(d) and 251 and the regulations thereunder have been met.

No adverse inference should be drawn from CLEC minimal or non-participation in opposition to Qwest's filing, particularly given Qwest's earlier refusal to collaboratively develop template terms and the belatedness of Qwest's filing causing this proceeding to occur in these economic times. (See Joint CLEC Response to STF No. 1.4.)

Particularly given Qwest's conduct to date, a better solution is for the Commission to (1) confirm that the SGAT remains available, subject to its change in law provisions (see Joint CLEC Response to STF No. 1.5.), and (2) expressly reject Qwest's template ICA proposal as any kind of SGAT replacement or "standard" ICA, along with expressly stating that there is no presumption of validity or compliance associated with Qwest's template ICA proposal. The Commission should also ensure centrally located and readily identifiable web posting of CLEC ICAs available for opt-in in Arizona. (See Joint CLEC Response to STF No. 1.4.)

Respondent: Douglas Denney, Integra - Joint CLEC Witness

³⁸ See, *e.g.*, Qwest-Eschelon AZ ICA Arbitration, Hrg. Ex. E-16 (Denney Surreb.), p. 138, line 16 ("Qwest refuses to negotiate rates as part of this arbitration").