

ATTACHMENT A

The standard under which Qwest has been operating since May of this year, and that Qwest applied to the agreements filed with the state commissions on August 20 and 21, 2002 and posted on the Qwest website, is substantively the same as that defined by the FCC in its Order dated October 4, 2002. The FCC Order says:

- The filing requirement applies to agreements or provisions that create ongoing obligations pertaining to Section 251(b) or (c) matters;
- The filing requirement does not apply to settlement agreements that simply provide for “backward-looking consideration” (e.g., the settlement of a dispute in consideration for a cash payment or the cancellation of an unpaid bill).
- The filing requirement does not apply to order forms or form contracts that memorialize an order for services, the terms and conditions of which are set forth in the filed interconnection agreement.

Mr. Wilson adds twenty-three agreements to his previous matrix, numbers 47 through 69, and alleges that they should have been filed pursuant to Section 252. Wilson Reply Declaration, ¶ 7. However, as shown in Qwest’s matrix here at Attachment B, Mr. Wilson is wrong on all counts. Many of these agreements do not fall within the filing criteria specified by the FCC because they are settlements of historical disputes or do not pertain to Section 251(b) or (c) matters. The rest either have expired by their own terms, been terminated, or been superseded by another contract, and thus no longer represent ongoing terms.

Mr. Wilson’s Reply Declaration also revisited some of the agreements that Qwest had analyzed and summarized with the FCC on October 22, 2002. That filing responded to Mr. Wilson’s first declaration and matrix. Specifically, Mr. Wilson continues to argue that agreement numbers 3, 19, 22, 23, 24, and 25 are interconnection agreements that must be filed. Conspicuous by its absence is any analysis or rebuttal specifying how or why Qwest’s description of those contracts is incorrect or conflicts with the FCC standard. Instead, Mr. Wilson speculates that there are unstated terms to the contracts and relies upon the identification of those contracts as interconnection agreements that should have been filed by the Minnesota Administrative Law Judge or the Arizona advocacy staff. *However, Mr. Wilson is not even correct on this -- the Arizona Staff and the Minnesota ALJ have listed only one these contracts as an interconnection amendment, and have not listed the other five.*¹ In any event, the following Qwest analysis and rebuttal to Mr. Wilson’s Reply Declaration and Matrix shows that these six contracts do not represent ongoing obligations under Section 251(b) or (c):

¹ For that matter, the other five contracts were not identified as interconnection agreements by the Minnesota Department of Commerce, the complainant before the Minnesota ALJ.

No. 3

Electric Light Wave	4/27/00	Confidential Billing Settlement Agreement	This agreement was a settlement of a historical dispute. It contained no forward-looking terms and only backward-looking consideration.
---------------------	---------	---	---

Neither the Arizona Staff in its most recent report dated August 14, nor the Minnesota ALJ in his Recommended Decision, listed this agreement as one that should be filed under Section 252. Mr. Wilson's Reply matrix does not disagree that this contract represents a settlement of an historical dispute; rather he states that the issues are "interesting" to CLECs, and that the agreement suggests there must be some terms outside of the written agreement or an "oral" agreement, without stating any facts to support such an extraordinary conclusion. A reading of this agreement shows that it is a settlement of an historical dispute without containing any provisions creating an ongoing obligation for Section 251(b) or (c) matters.

No. 19

MCI WorldCom	11/30/00	Settlement Agreement	Any Section 251 issues addressed in this agreement were settlements of historical disputes with payment of backward-looking consideration.
--------------	----------	----------------------	--

Neither the Arizona Staff in its most recent report dated August 14, nor the Minnesota ALJ in his Recommended Decision, listed this agreement as one that should be filed under Section 252. Mr. Wilson's Reply matrix says, remarkably, that "the agreement does not specify how those issues are resolved going forward." *In other words, Mr. Wilson admits that the agreement does not contain any ongoing, forward-looking terms, and is merely a backward-looking resolution of an historical dispute.*

No. 22:

McLeod	9/29/00	Confidential Amendment to Confidential Billing Settlement Agreement	¶¶ 1 and 2 settle historical disputes with only backward-looking consideration.
--------	---------	---	---

Again, neither the Arizona Staff in its most recent report dated August 14, nor the Minnesota ALJ in his Recommended Decision, listed this agreement as one that should be filed under Section 252. And again, Mr. Wilson admits that this contract contains no going forward terms. He nevertheless baselessly speculates that "some [going forward] arrangements must have been made orally" without providing any facts to support such a conclusion. Any reading of this agreement

shows that it is a settlement of an historical dispute without containing any provisions creating an ongoing obligation for Section 251(b) or (c) matters.

No. 23

McLeod	10/26/00	Confidential Amendment to Confidential Billing Settlement Agreement	Settlement of Historical Dispute
--------	----------	---	----------------------------------

Once again, neither the Arizona Staff in its most recent report dated August 14, nor the Minnesota ALJ in his Recommended Decision, listed this agreement as one that should be filed under Section 252, and again Mr. Wilson admits that this contract contains no going forward terms. He speculates that “some [going forward] arrangements must have been made” without providing any facts to support such a conclusion. Any reading of this agreement shows that it is a settlement of an historical dispute without any provisions creating an ongoing obligation for Section 251(b) or (c) matters.

No. 24

McLeod	10/26/00	Purchase Agreement	Volume purchase commitments do not reflect new terms and conditions related to 251 services. In any event, this agreement was terminated by the parties on 9/19/02. To the extent the agreement was amended to include a discount component, as found by the Minnesota Commission, such a component was also terminated by the parties on 9/19/02.
--------	----------	--------------------	--

This is the only contract of the six that the Arizona Staff and the Minnesota ALJ identified as an interconnection agreement; however, this is premised upon their finding that Qwest and McLeod entered into an oral agreement for a discount, not on the written agreement standing alone. As Qwest has repeatedly stated before, it denies the existence of such an oral agreement. But, without regard to who is correct on the existence or non-existence of such an oral agreement, there is no dispute that this arrangement, as well as any alleged oral component, was terminated by the parties on September 19, 2002, and therefore there are no current ongoing obligations represented by this contract.

No. 25

McLeod	12/31/01	Confidential Billing Settlement Agreement (QC)	¶¶ 1 and 2 resolve and settle a past dispute and involve only backward-looking consideration.
--------	----------	--	---

Again, neither the Arizona Staff in its most recent report dated August 14, nor the Minnesota ALJ in his Recommended Decision, listed this agreement as one that should be filed under Section 252. Again, Mr. Wilson admits that this contract addresses only past performance and does not specify any going forward terms. Under the FCC Order, such an agreement does not fall within the Section 252 filing standard.

Thus, the Arizona Staff and the Minnesota ALJ considered only one of the above contracts to be an interconnection agreement, and for the reasons stated, none of them represent current, ongoing obligations pertaining to Section 251 services.

Mr. Wilson also alleges that Qwest did not address all of the terms that are contained in agreement numbers 4, 6, 26, and 31. Wilson Reply Declaration, ¶13. Interestingly, Mr. Wilson does not identify what those additional terms are or whether they have any impact on Section 252 filing issues.

In fact, as Qwest stated in its October 22, 2002 response, agreement number 4 with Electric Light Wave has been superseded in its entirety as outlined in the April 26, 2002 *Confidential Billing Settlement Agreement* and through interconnection amendments filed in Utah, Washington, and Idaho. Agreement number 6, which is the April 26, 2002 agreement with Electric Light Wave, is a combination of a resolution of historical disputes, and statements that the parties will file interconnection amendments to reflect new, ongoing terms of interconnection. Qwest in fact filed those amendments, and thus all that remains is the settlement of historical disputes, which is not subject to the filing requirement. Mr. Wilson fails to identify any provisions in this contract that should have been filed, but were not.

As to agreement number 26, Qwest clearly stated in its October 22 matrix that it relates to reciprocal compensation and that those provisions have been superseded by interconnection amendments filed with the states. As to agreement number 31, Mr. Wilson's matrix again makes the extraordinary claim that there are missing terms, without any supporting facts or reasons. As stated previously by Qwest, the terms stated in this contract are not ongoing and were superseded by the contract dated December 31, 2001, ongoing provisions of which were filed with the applicable state commissions on August 21 and 22, 2002. Mr. Wilson does not deny these facts.

Mr. Wilson also asserts that agreement numbers 11, 27, and 28 refer to certain capabilities that other CLECs have requested. The issue here, however, is whether any of those contracts contain ongoing terms pertaining to Section 251 services that have not expired or been terminated. As shown by Qwest's matrix submitted October 22, 2002,

they do not, and Mr. Wilson's Reply Declaration and matrix do not contradict Qwest's conclusions.

Finally, Mr. Wilson says that, if the content of these contracts were known, the workshops would have included numerous additional issues. In fact, these agreements have been available for review for several months, and AT&T has filed motions requesting the states to re-open the 271 workshops on the basis on these agreements. The states have uniformly denied AT&T's motion. Further, Mr. Wilson, despite listing up to 78 agreements, fails to identify any issues that have not been fully reviewed or that should be the basis of reopening the 271 workshops.

In sum, neither Mr. Wilson's Reply Declaration, nor any of his newly listed agreements, identify any errors in Qwest's analysis of the past agreements. Based on its own review, Qwest is not aware of any provisions representing an ongoing obligation pertaining to Section 251(b) or (c) that have not expired or been terminated and remain unfiled. Mr. Wilson has not pointed to any of such provisions here. Qwest stands by its original response to Mr. Wilson provided with its Supplemental Reply Comments in this docket at 60-61 and the accompanying Brotherson Declaration at Exhibit B.